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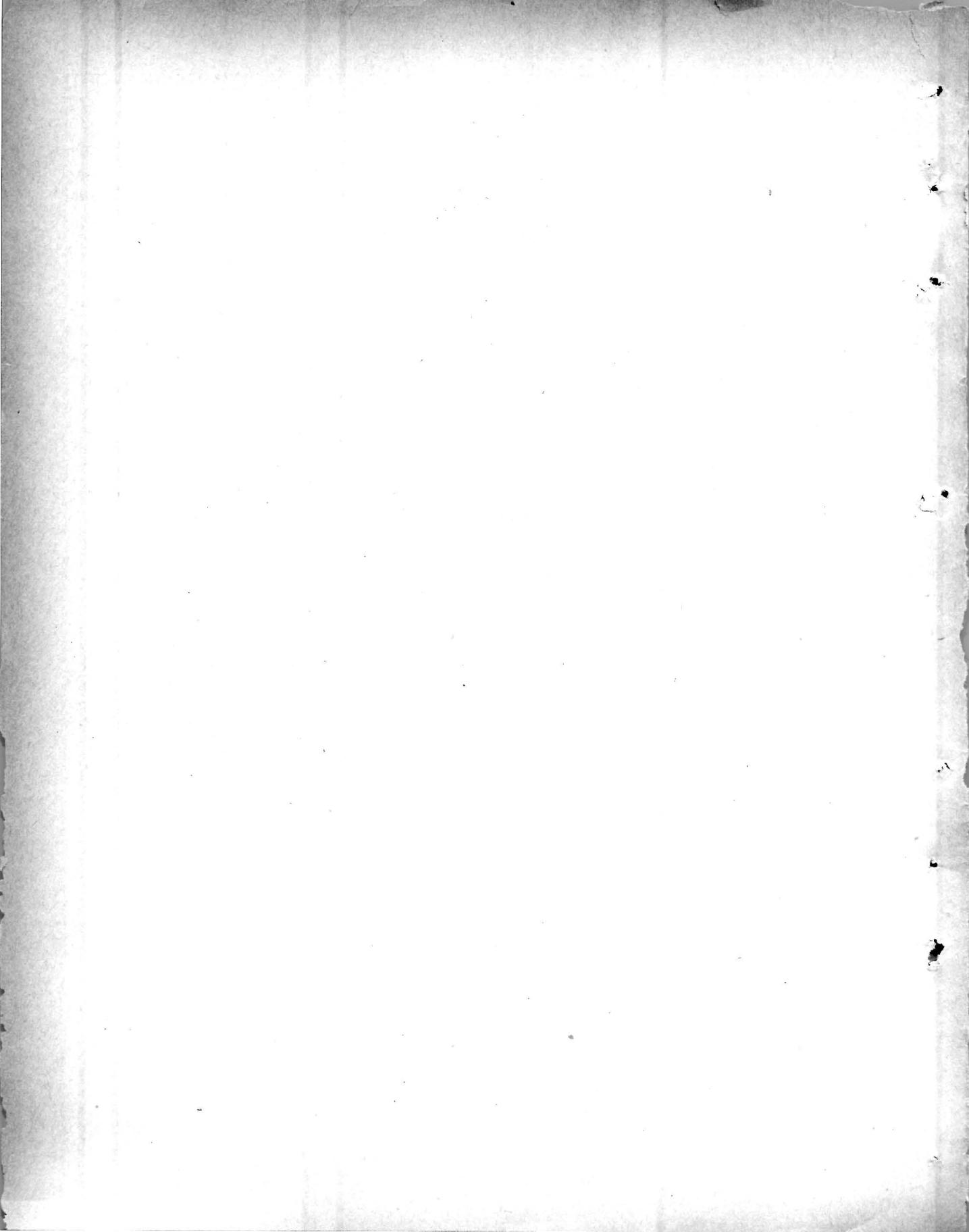
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THE OFFICIAL MONTH IN REVIEW

SINCE the United States is the only nation whose flag does not follow her investments and which, therefore, can compete with practically every nation of the world, politically and economically, the Philippines can serve in the Far East as a sort of broadcasting station for American principles, American altruism and noble ideas, President Manuel Roxas told a group of visiting prominent newspapermen headed by Editors Walker Stone and Marshall N. Dana at a conference in Malacañan on August 1.

DECLARING that the Government will give equal opportunities to all parties participating in the coming November elections for national and local officials, the President in a letter to Senator Eulogio Rodriguez, Sr., president of the Nacionalista party, under date of August 4, promised the minority chief that the minority party would be given free time at the Government radio Station KZFM to campaign for its candidates, with the only condition that no personal attacks would be allowed the speakers using the broadcasting station, regardless of whether they be Nacionalista or Liberal partymen.

(See the full text of the President's message under "HISTORICAL PAPERS AND DOCUMENTS" in this issue.)

AT the celebration of the second anniversary of V-J Day on August 14, President Roxas in a message stated that the Philippines is well on the road toward national recovery. Concluding his message, the President said: "Conscious of our historic destiny in this part of the world, we are marching forward to erect in our country a true monument to the ideals of freedom and progress for which we fought in the war and which are the priceless goals of America, not only for herself, but for all the nations of the earth. In this task, I am sure we will not fail."

(See the full text of the President's message under "HISTORICAL PAPERS AND DOCUMENTS" in this issue.)

IN connection with the celebration of the 69th birthday anniversary of the late President Manuel L. Quezon, a public parade was held on August 18 at Quezon City led by the U. S. Army band. Other participants were the Philippine Army, the UST ROTC Units, the police forces of the cities of Manila and Quezon, and other civic organizations. President Roxas arrived at the grandstand while the parade was on the march. He was accompanied by Mrs. Roxas, who after the ceremony planted the "Quezon Tree" in front of the Quezon City Hall. A Quezon Memorial Program was also broadcast at night over Station KZPI with Vice-President Quirino as principal speaker.

(See the full text of the President's message on Quezon's 69th birthday anniversary under "HISTORICAL PAPERS AND DOCUMENTS" in this issue.)

ON August 18, President Roxas issued an executive order organizing ten regular municipalities in Cotabato, Mindanao. In issuing the order, the President said: "I have made a careful study of the conditions prevailing in the specially-organized provinces and I have reached the conclusion that it is not advisable at the present time to authorize the election of all elective officials. The reason which has impelled me to reach this conclusion is chiefly the large number of firearms which are still in the hands of unauthorized persons in those localities."

(See the complete text of the executive order under "EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS BY THE PRESIDENT" in this issue.)

DURING the deliberations on the government reorganization plan held on the night of August 21, President Roxas told Internal Revenue Collector Bibiano L. Meer that he was waiting for "big shots" to be brought to the courts for evading tax payments amounting to ₱50,000 or more each. The President's desire to have the agents of the law go after moneyed but delinquent taxpayers was expressed during the discussion devoted mainly to the overhauling of the Department of Finance.

ANSWERING charges coming from certain quarters that the Administration is lukewarm to the plan of promoting Tagalog as the national language, President Roxas during the meeting with his advisers on government reorganization on the night of August 30, declared: "I am interested in the work of the Institute of National Language and in the propagation of the national language; so much so that I want its work coordinated with that of our schools." The President countered that he has been delivering speeches in Tagalog to give the people an example of a public official's interest in the national language. Recently he has appointed a director and an executive secretary of the Institute of National Language.

EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 68

ESTABLISHING A NATIONAL WAR CRIMES OFFICE AND PRESCRIBING RULES AND REGULATIONS GOVERNING THE TRIAL OF ACCUSED WAR CRIMINALS.

I, Manuel Roxas, President of the Philippines, by virtue of the powers vested in me by the Constitution and laws of the Philippines, do hereby establish a National War Crimes Office charged with the responsibility of accomplishing the speedy trial of all Japanese accused of war crimes committed in the Philippines, and prescribe the rules and regulations governing such trial.

The National War Crimes Office is established within the Office of the Judge Advocate General of the Army of the Philippines and shall function under the direction, supervision and control of the Judge Advocate General. It shall proceed to collect from all available sources evidence of war crimes committed in the Philippines from the commencement of hostilities by Japan in December, 1941, maintain a record thereof, and bring about the prompt trial of the accused.

The National War Crimes Office shall maintain direct liaison with the Legal Section, General Headquarters, Supreme Commander for the Allied Powers, and shall exchange with the said office information and evidence of war crimes.

The following rules and regulations shall govern the trial of persons accused as war criminals:

I. ESTABLISHMENT OF MILITARY COMMISSIONS:

a. *General.*—Persons accused as war criminals shall be tried by military commissions to be convened by, or under the authority of, the President of the Philippines.

II. JURISDICTION:

a. *Over Persons.*—The military commissions appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial.

b. Over Offenses.—The military commissions established hereunder shall have jurisdiction over all offenses including, but not limited to, the following:

(1) The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

(2) Violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or internees or persons on the seas or elsewhere; improper treatment of hostages; plunder of public or private property; wanton destruction of cities, towns or villages; or devastation not justified by military necessity.

(3) Murder, extermination, enslavement, deportation and other inhuman acts committed against civilian populations before or during the war, or persecutions on political, racial or religious grounds in execution of, or in connection with, any crime defined herein, whether or not in violation of the local laws.

III. MEMBERSHIP OF COMMISSIONS:

a. Appointment.—The members of each military commission shall be appointed by the President of the Philippines, or under authority delegated by him. Alternates may be appointed by the convening authority. Such alternates shall attend all sessions of the commission, and in case of illness or other incapacity of any principal member, an alternate shall take the place of that member. Any vacancy among the members or alternates, occurring after a trial has begun, may be filled by the convening authority, but the substance of all proceedings had and evidence taken in that case shall be made known to the said new member or alternate. This fact shall be announced by the president of the commission in open court.

b. Number of Members.—Each commission shall consist of not less than three (3) members.

c. Qualifications.—The convening authority shall appoint to the commission persons whom he determines to be competent to perform the duties involved and not disqualified by personal interest or prejudice, provided that no person shall be appointed to hear a case in which he personally investigated, or wherein his presence as a witness is required. One specially qualified member shall be designated as the law member whose ruling is final insofar as concerns the commission on an objection to the admissibility of evidence offered during the trial.

d. Voting.—Except as to the admissibility of evidence, all rulings and findings of the Commission shall be by majority vote, except that conviction and sentence shall be by the affirmative vote of not less than two-thirds (2/3) of the members present.

e. Presiding Member.—In the event that the convening authority does not name one of the members as the presiding member, the senior officer among the members of the Commission present shall preside.

IV. PROSECUTORS:

a. Appointment.—The convening authority shall designate one or more persons to conduct the prosecution before each commission.

b. Duties.—The duties of the prosecutors are:

(1) To prepare and present charges and specifications for reference to a commission.

(2) To prepare cases for trial and to conduct the prosecution before the commission of all cases referred for trial.

V. POWERS AND PROCEDURE OF COMMISSIONS:

a. Conduct of the Trial.—A Commission shall:

(1) Confine each trial strictly to a fair and expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any unnecessary delay or interference.

(2) Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.

(3) Hold public sessions except when otherwise decided by the commission.

(4) Hold each session at such time and place as it shall determine, or as may be directed by the convening authority.

b. Rights of the Accused.—The accused shall be entitled:

(1) To have in advance of the trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offense charged.

(2) To be represented, prior to and during trial, by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defense.

(3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the commission.

(4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

c. Witnesses.—The Commission shall have power:

(1) To summon witnesses and require their attendance and testimony; to administer oaths or affirmations to witnesses and other persons and to question witnesses.

(2) To require the production of documents and other evidentiary material.

(3) To delegate to the Prosecutors appointed by the convening authority the powers and duties set forth in (1) and (2) above.

(4) To have evidence taken by a special commissioner appointed by the commission.

d. Evidence.

(1) The commission shall admit such evidence as in its opinion shall be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man. The commission shall apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

(a) Any document, irrespective of its classification, which appears to the commission to have been signed or issued by any officer, department, agency or member of the armed forces of any Government without proof of the signature or of the issuance of the document.

(b) Any report which appears to the commission to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or a member of any medical service personnel, or by any investigator or intelligence officer, or by any other person whom the commission considers as possessing knowledge of the matters contained in the report.

(c) Affidavits, depositions or other signed statements.

(d) Any diary, letter or other document, including sworn or unsworn statements, appearing to the commission to contain information relating to the charge.

(e) A copy of any document or other secondary evidence of its contents, if the original is not immediately available.

(2) The commission shall take judicial notice of facts of common knowledge, official government documents of any nation, and the proceedings, records and findings of military or other agencies of any of the United Nations.

(3) A commission may require the prosecution and the defense to make a preliminary offer of proof, whereupon the commission may rule in advance on the admissibility of such evidence.

(4) The official position of the accused shall not absolve him from responsibility, nor be considered in mitigation of punishment. Further, action pursuant to an order of the accused's superior, or of his Government, shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires.

(5) All purported confessions or statements of the accused shall be admissible in evidence without any showing that they were voluntarily made. If it is shown that such

confession or statement was procured by means which the commission believes to have been of such character that they may have caused the accused to make a false statement, the commission may strike out or disregard any such portion thereof as was so procured.

e. Trial Procedure.—The proceedings of each trial shall be conducted substantially as follows, unless modified by the commission to suit the particular circumstances:

(1) Each charge and specification shall be read, or its substance stated, in open court.

(2) The presiding member shall ask each accused whether he pleads "Guilty" or "Not guilty."

(3) The prosecution shall make its opening statement.

(4) The presiding member may, at this or any other time, require the prosecutor to state what evidence he proposes to submit to the commission and the commission thereupon may rule upon the admissibility of such evidence.

(5) The witnesses and other evidence for the prosecution shall be heard or presented. At the close of the case for the prosecution, the commission may, on motion of the defense for a finding of not guilty, consider and rule whether the evidence before the commission supports the charges against the accused. The commission may defer action on any such motion and permit or require the prosecution to reopen its case and produce any further available evidence.

(6) The defense may make an opening statement prior to presenting its case. The presiding member may, at this or any other time, require the defense to state what evidence it proposes to submit to the commission, whereupon the commission may rule upon the admissibility of such evidence.

(7) The witnesses and other evidence for the defense shall be heard or presented. Thereafter, the prosecution and defense may introduce such evidence in rebuttal as the commission may rule as being admissible.

(8) The defense, and thereafter the prosecution, shall address the commission.

(9) The commission thereafter shall consider the case in closed session and unless otherwise directed by the convening authority, announce in open court its judgment and sentence, if any. The commission may state the reasons on which judgment is based.

f. Record of Proceedings.—Each commission shall make a separate record of its proceedings in the trial of each case brought before it. The record shall be prepared by the prosecutor under the direction of the commission and submitted to the defense counsel. The commission shall be responsible for its accuracy. Such record, certified by

the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

g. Sentence.—The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, fine, or such other punishment as the commission shall determine to be proper.

h. Approval of Sentence.—No sentence of a military commission shall be carried into effect until approved by the Chief of Staff: *Provided*, That no sentence of death or life imprisonment shall be carried into execution until confirmed by the President of the Philippines. For the purpose of his review, the Chief of Staff shall create a Board of Review to be composed of not more than three officers none of whom shall be on duty with or assigned to the Judge Advocate General's Office. The Chief of Staff shall have the authority to approve, mitigate, remit in whole or in part, commute, suspend, reduce or otherwise alter the sentence imposed, or (without prejudice to the accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity of the sentence. Except as herein otherwise provided, the judgment and sentence of a commission shall be final and not subject to review by any other tribunal.

VI. RULE-MAKING POWER:

Supplementary Rules and Forms.—Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions of this Order, or such rules and forms as may be prescribed by the convening authority or by the President of the Philippines.

VII. The amount of seven hundred thousand pesos is hereby set aside out of the appropriations for the Army of the Philippines for use by the National War Crimes Office in the accomplishment of its mission as hereinabove set forth, and shall be expended in accordance with the recommendations of the Judge Advocate General as approved by the President. The buildings, fixtures, installations, messing, and billeting equipment and other property heretofore used by the Legal Section, Manila Branch, of the General Headquarters, Supreme Commander for the Allied Powers, which will be turned over by the United States Army to the Philippine Government through the Foreign Liquidation Commission and the Surplus Property Commission are hereby specifically reserved for use of the National War Crimes Office.

Executive Order No. 64, dated August 16, 1945, is hereby repealed.

Done at the City of Manila, this 29th day of July, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 69

REQUIRING ALIENS CHARGED BEFORE THE DEPORTATION BOARD WITH COLLABORATION WITH THE ENEMY TO FILE BOND FOR APPEARANCE.

For the purpose of insuring the appearance of aliens charged before the Deportation Board created under Executive Order No. 37, dated January 4, 1947, and facilitating the execution of the order of deportation whenever the President decides the case against the respondent, I, Manuel Roxas, President of the Philippines, by virtue of the powers vested in me by law, do hereby order that all respondents in deportation proceedings shall file a bond with the Commissioner of Immigration in such amount and containing such conditions as he may prescribe.

The Commissioner of Immigration shall issue such rules and regulations as may be necessary to carry into effect the provisions of this Order.

This Order shall take effect upon its promulgation.

Done at the City of Manila, this 29th day of July, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 70

DECLARING CIVILIAN VOLUNTEERS WHO WERE
MEMBERS OF RECOGNIZED GUERRILLA UNITS
AS HAVING THE EQUIVALENT TRAINING OF
THOSE WHO HAVE COMPLETED TRAINEE IN-
STRUCTION AND AS CONSTITUTING A PART OF
THE RESERVE UNITS.

WHEREAS, subparagraph 2 of paragraph 3, section 52 of the National Defense Act, as amended by Commonwealth Act No. 569 dated June 7, 1940, provides as follows:

"First Reserve.—Those between the ages of twenty-two and thirty-one years, both inclusive, and including also all those who have completed trainee instruction or its equivalent even though they may not have attained the age of twenty-two";

WHEREAS, the trained reserve for the military service of the country is at present depleted due to casualty losses occasioned by the war;

WHEREAS, the civilian volunteers during the war, whose services were recognized, are now separated from the military service; and

WHEREAS, said civilian volunteers, by reason of their varied and accumulated experiences gained in combat, are among the best qualified to serve the military needs of the country;

Now, THEREFORE, I, Manuel Roxas, President of the Philippines, by virtue of the powers vested in me by law, do hereby declare civilian volunteers who were members of duly recognized guerrilla units as having the equivalent training of those who have completed trainee instruction and as constituting a part of the Reserve Units.

Done at the City of Manila, this 29th day of July, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 71

SAVING UNDER CERTAIN CONDITIONS VALIDLY EXISTING CONCESSIONS OR LICENSES TO CUT TIMBER WITHIN THE AREA RESERVED UNDER PROCLAMATION NO. 29 FROM THE OPERATION THEREOF.

WHEREAS, the following parcel of land situated in the municipalities of Butuan and Buenavista and municipal districts of Las Nieves, Remedios, Milagros, Concordia, Esperanza, Guadalupe, Santa Ines, San Luis, Mampinsahan, Verdu, Maygatasan and Nuevo Sibagat, Province of Agusan, to wit:

Beginning at point 1, which is the mouth of Baug River, which is approximately 8,000 meters N. 17° W. from BLIM No. 1 Butuan, Agusan; thence following Baug River upstream in a general northeasterly direction about 1,300 meters to point 2 which is the junction of Baug and Bansua Rivers; thence following Bansua, Maycasina, Tagibo and Pianing Rivers upstream in a general southeasterly then easterly direction about 23,000 meters to point 3 which is the source of Pianing River; thence S. 45° E. about 5,800 meters to point 4 at Uaua River; thence S. $17^{\circ} 30'$ E. about 27,200 meters to point 5 which is the source of Labao River; thence following Labao River downstream in a general southwesterly direction about 19,000 meters to point 6 which is the junction of Labao and Agusan Rivers; thence following Agusan River upstream in a general southeasterly direction about 28,500 meters to point 7 which is the junction of Agusan and Maasam Rivers; thence following Maasam River upstream in a general southwesterly direction about 21,000 meters to point 8 at the same Maasam River; thence N. 30° W. about 23,200 meters to point 9 which is the junction of Ojot River and Agsab Creek; thence in a northerly direction about 7,500 meters to point 10 which is the source of Lingayao River; thence following Lingayao River downstream in a general northeasterly direction about 12,800 meters to point 11 at the same Lingayao River; thence in a northerly direction to point 12 which is the source of Danapa Creek; thence following Danapa Creek downstream in a northeasterly direction about 3,500 meters to point 13 which is the junction of Danapa Creek with Agusan River; thence following the Agusan River downstream in a general northerly direction about 6,300 meters to point 14 which is the junction of Agusan and Bugabus Rivers; thence following Bugabus River and Calitan Creek upstream in a northwesterly then southwesterly direction about 27,000 meters to point 15 which is the source of Calitan Creek; thence in a northeasterly direction to point 16 which is the source of Tamutao River; thence following Tamutao and Buenavista Rivers downstream in a northeasterly direction about 17,500 meters to point 17 which is the mouth of the Buenavista River; thence following the coast line in an eastnortheasterly direction about

14,800 meters to point 1, the point of beginning, containing an approximate area of 165,000 hectares.

has been reserved, under Proclamation No. 29, dated July 29, 1947, as "Special Forest for Government Lumber Production Purposes" to be undertaken by the National Development Company;

WHEREAS, there are concessions or licenses to cut timber within the area hereinabove described validly existing as of July 1, 1947;

NOW, THEREFORE, I, Manuel Roxas, President of the Philippines, by virtue of the powers vested in me by law, do hereby order that the reservation established under Proclamation No. 29 shall not operate to invalidate any concession or license to cut timber within the area covered by the reservation validly existing as of July 1, 1947: *Provided*, That if upon expiration of such concession or license subsequent to July 1, 1947, the licensee or concessionaire shall have failed as of the date of the expiration of the said license or concession to meet all the requirements and obligations imposed by his license or concession and the rules and regulations of the Bureau of Forestry pertinent thereto, the said license or concession shall thereupon be automatically revoked and the area covered by the revoked license or concession shall no longer be subject to private operation; *Provided, further*, That the provision of any license or concession to the contrary notwithstanding, the National Development Company shall have the right of way to carry on its operation throughout the extent of the area reserved; and *Provided, finally*, That no further concession or license shall be issued affecting any area within said reservation.

Done at the City of Manila, this 29th day of July, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 72

ORGANIZING THE MUNICIPAL DISTRICTS OF SUDIPEN, SAN GABRIEL AND PUGO, PROVINCE OF LA UNION, INTO REGULAR MUNICIPALITIES.

Upon the recommendation of the Secretary of the Interior and pursuant to the authority vested in me by the provisions of Act No. 3386, the municipal districts of Sudipen, San Gabriel and Pugo, Province of La Union, are hereby organized into regular municipalities in accordance with the provisions of Chapter 57 of the Revised Administrative Code. The fourteen municipalities of the Province of La Union as established under section 38 of the Revised Administrative Code are, therefore, hereby increased to seventeen.

This Order shall take effect immediately.

Done at the City of Manila, this 30th day of July, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 73

CREATING THE RADIO BROADCASTING BOARD TO
ADMINISTER AND OPERATE RADIO STATION
KZFM ACQUIRED AS SURPLUS BY THE GOV-
ERNMENT OF THE REPUBLIC OF THE PHILIP-
PINES FROM THE GOVERNMENT OF THE
UNITED STATES OF AMERICA.

WHEREAS, the United States Information Service, an instrumentality of the United States Government, has transferred and conveyed unto the Government of the Republic of the Philippines, the free use of all radio broadcasting equipment and facilities now existing and utilized by Radio Station KZFM, and such other radio equipment as may be declared surplus and transferable to the Government of the Republic of the Philippines;

WHEREAS, the Republic of the Philippines is desirous of affording a medium for the dissemination of information and news through the radio to the remotest corners of the Philippines and of providing means for the training of Filipino radio technicians;

WHEREAS, Republic Act No. 83 authorized the President of the Philippines to create or designate an agency or in-

strumentality to accept and administer the surplus properties acquired by the Government of the Republic of the Philippines from the Government of the United States of America;

NOW, THEREFORE, I, Manuel Roxas, President of the Philippines, by virtue of the powers vested in me by the Constitution and section 2 of Republic Act No. 33, do hereby create and constitute an office to be known as the Radio Broadcasting Board which shall be composed of the Press Secretary of the Office of the President as Chairman, and four other members to be appointed by the President of the Philippines. The Chairman and members of the Radio Broadcasting Board shall not receive any additional compensation but may be allowed to collect a per diem of twenty-five pesos for each day of actual attendance at the meeting of the board called by the Chairman thereof. For administrative purposes, the board shall be under the control and supervision of the Chief of the Executive Office.

The Radio Broadcasting Board shall have the following functions and duties:

(a) To administer and operate all broadcasting equipment and facilities now existing and utilized by Radio Station KZFM, and such other radio equipment as may be declared surplus and transferred to the Government of the Republic of the Philippines, or which the board may hereinafter acquire;

(b) To provide for the use of the Government of the Republic of the Philippines a ready broadcasting station;

(c) To provide for an effective medium through which the Government of the Republic of the Philippines may be brought nearer to the people, and for the dissemination of government information; and

(d) To provide a new vehicle for advertising needed articles for educational and cultural purposes, books, magazines and school supplies, medical supplies and equipment, movie programs of educational and cultural significance, agricultural implements, seeds, and supplies.

The Radio Broadcasting Board shall, with the approval of the Chief of the Executive Office, promulgate all needful rules and regulations consistent with law relative to the administration and operation of Radio Station KZFM.

Subject to the approval of the President of the Philippines, the Radio Broadcasting Board shall appoint a manager and fix his compensation. The manager shall, with the approval of the Radio Broadcasting Board, appoint such technical, clerical, and other employees as may be necessary: *Provided*, That all appointments for positions with compensation of two thousand four hundred pesos per annum or more shall be subject to the approval of the President.

There is appropriated out of the funds in the National Treasury not otherwise appropriated, the sum of two hundred thousand pesos as a revolving fund for the operation and maintenance of the office created herein.

The Radio Broadcasting Board shall submit its annual report and balance sheet to the President of the Philippines.

Done at the City of Manila, this 12th day of August, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

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MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 74

PHYSICAL AND MEDICAL EXAMINATION OF PROPOSED APPOINTEES IN THE UNCLASSIFIED SERVICE AND IN GOVERNMENT BOARDS, AGENCIES AND INSTRUMENTALITIES.

WHEREAS, under Executive Order No. 183, dated February 2, 1939, every proposed appointee in the classified service of the Government, in the University of the Philippines, and in Government-owned or controlled corporations, who, if appointed, would acquire the status of a person upon whom membership insurance is compulsory as provided in Commonwealth Act No. 186, is required to undergo a physical and medical examination to determine his fitness for work and the presence, if any, of disqualifying diseases or physical impairments which will make him a menace to his co-workers and unacceptable as an insurance risk;

WHEREAS, to safeguard the health of Government employees, promote efficiency in the service, and insure the solvency of the Government Service Insurance System, it is necessary that the provisions of said Executive Order be also made applicable to proposed appointees in the unclassified service of the Government and in Government boards, agencies, and instrumentalities;

NOW, THEREFORE, I, Manuel Roxas, President of the Philippines, by virtue of the powers vested in me by law, do hereby order and direct that the provisions of Executive Order No. 183, dated February 2, 1939, shall also be ob-

served when making appointments in the unclassified service of the Government and in Government boards, agencies, and instrumentalities whether or not they are members of the System: *Provided*, That the provisions of said Executive Order shall not apply to appointments of officials and employees mentioned in subsections (a), (e) and (f) of section 671 of the Revised Administrative Code, as amended by Commonwealth Act No. 177; to those which will not entitle the appointees to compulsory membership insurance under the provisions of Commonwealth Act No. 186; to those which are vested in the President of the Philippines, and to those which may be specifically exempted from the provisions thereof by the President of the Philippines.

Done at the City of Manila, this 12th day of August, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

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MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 75

**DESIGNATING THE CEBU LANDING FIELD AS A
NATIONAL AIRPORT**

For the purpose of accelerating the development of civil aviation in the Philippines, I, Manuel Roxas, President of the Philippines, by virtue of the powers vested in me by law, do hereby repeal Executive Order No. 154, dated June 24, 1938, and reclassify the Cebu Landing Field at Lahug, Cebu, as a National Airport under the supervision and control of the Bureau of Aeronautics, subject to the following conditions:

- (1) That it shall be made fully available to the Philippine Air Force in times of emergency; and
- (2) That a detachment of the Philippine Air Force shall be allowed to operate at said airport during peace time in furtherance of Philippine Air Force missions, in accordance with agreements entered into by and between the Bureau of Aeronautics and the Chief of the Philippine Air Force.

Done at the City of Manila, this 12th day of August, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 76

AMENDING EXECUTIVE ORDER NO. 31, DATED NOVEMBER 28, 1946, CREATING THE SHIPPING COMMISSION.

The first and second paragraphs of Executive Order No. 31, dated November 28, 1946, entitled "Creating the Shipping Commission," are hereby amended to read as follows:

"By virtue of the powers vested in me by law, I, Manuel Roxas, President of the Philippines, do hereby create the Shipping Commission to be composed of a Chairman and four Members who shall be appointed by the President of the Philippines. There shall also be a General Manager appointed by the President who shall serve on full time basis with compensation to be fixed by the President.

"The Chairman and the four Members shall serve on part time basis with *per diems* at such rate as the President may fix."

Done at the City of Manila, this 12th day of August, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 77

AMENDING PARAGRAPH NO. 1 OF EXECUTIVE ORDER NO. 33, DATED DECEMBER 27, 1946, ENTITLED "PROMULGATING RULES AND RE-

GULATIONS TO CARRY OUT THE PROVISIONS OF REPUBLIC ACT NUMBERED THIRTY ENTITLED 'AN ACT AUTHORIZING THE PAYMENT, UNDER CERTAIN CONDITIONS, OF A GRATUITY TO THE WIDOW AND/OR CHILDREN, AND IN THEIR ABSENCE TO THE OTHER HEIRS, OF A DECEASED OFFICER OR MEMBER OF ANY POLICE FORCE OR SIMILAR GOVERNMENTAL ORGANIZATION ENGAGED IN THE MAINTENANCE OF PEACE AND ORDER, APPROPRIATING FUNDS THEREFOR.'"

Paragraph No. 1 of Executive Order No. 33, dated December 27, 1946, entitled "Promulgating rules and regulations to carry out the provisions of Republic Act Numbered thirty entitled 'An Act authorizing the payment, under certain conditions, of a gratuity to the widow and/or children, and in their absence to the other heirs, of a deceased officer or member of any police force or similar governmental organization engaged in the maintenance of peace and order, appropriating funds therefor,'" is hereby amended to read as follows:

"1. Claims under the aforesaid Act shall be paid only after the Secretary of the Interior, upon the advice of the provincial governor with respect to members of the police force in his province and of the provincial commander with respect to members of the Military Police Command, has determined that they come within or that they fully satisfy the requirements of Republic Act No. 30."

Done at the City of Manila, this 12th day of August, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 78

SEGREGATING THE BARRIO OF ALONEROS FROM THE MUNICIPALITY OF TAGKAWAYAN, QUEZON PROVINCE, AND ANNEXING SAID BARRIO TO THE MUNICIPALITY OF GUINAYANGAN, SAME PROVINCE.

Upon the recommendation of the Secretary of the Interior, and pursuant to the provisions of section 68 of the Revised Administrative Code, the barrio of Aloneros of the municipality of Tagkawayan, Quezon Province, is hereby segregated from said municipality and annexed to the municipality of Guinayangan, same province. The boundary line between the municipalities of Tagkawayan and Guinayangan as a result of this transfer shall be the Kabibihan River.

The annexation herein made shall take effect January 1, 1948.

Done at the City of Manila, this 12th day of August, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 79

ORGANIZING A PORTION OF THE MUNICIPALITY OF SINDANGAN, PROVINCE OF ZAMBOANGA, INTO AN INDEPENDENT MUNICIPALITY UNDER THE NAME OF LABASON WITH THE SEAT OF GOVERNMENT IN THE BARRIO OF LABASON.

Upon the recommendation of the Secretary of the Interior and pursuant to the provisions of section 68 of the Revised Administrative Code, the nine municipalities in the Province of Zamboanga as established by section 40 of the Revised Administrative Code, as amended, and Executive Orders No. 77, series of 1936, and No. 353, series of 1941, are hereby increased to ten by segregating from the municipality of Sindangan the barrios of Labason and La Libertad and organizing the same into an independent municipality under the name of Labason with the seat of government in the barrio of Labason. The territory of the municipality of Labason, as herein constituted, shall be bounded on the east by the territory of the municipality of Sindangan from which it is separated by the entire

course of the Patawag River, as shown in the map of Sindangan, prepared on July 19, 1947, by the instrument-surveyman and submitted to and approved by the district engineer of Zamboanga; on the south by the municipality of Kabasalan, from which it is separated by the present Sindangan-Kabasalan boundary; and on the southwest by the municipality of Siocon, from which it is separated by the present boundary line between the municipalities of Sindangan and Siocon. The territory of the municipality of Sindangan shall consist of its present territory minus the territory comprised in the municipality of Labason.

The organization herein made shall take effect on January 1, 1948.

Done at the City of Manila, this 12th day of August, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 80

ORGANIZING CERTAIN PORTIONS OF THE MUNICIPALITIES OF TALIBON AND UBAY, PROVINCE OF BOHOL, INTO AN INDEPENDENT MUNICIPALITY UNDER THE NAME OF TRINIDAD.

Upon the recommendation of the Secretary of the Interior and pursuant to the provisions of section 68 of the Revised Administrative Code, the thirty-six municipalities in the Province of Bohol, as established by section 38 of the Revised Administrative Code, are hereby increased to thirty-seven, by segregating from the municipality of Talibon the barrios of Ipil, Kinanoan, Hinlayagan, Cambangay Norte, Cambangay Sur, Canmanaga, Mahayag, Malitbog, Capayas, Tomoc, Cagawasan, Bongbong, Banlasan, Garcia and Cabigohan, and from the municipality of Ubay the barrios of Tagum, Guinobatan, and Mahagbu, and organizing them into an independent municipality under

the name of Trinidad, with the seat of government at the barrio of Ipil.

The municipality of Trinidad as herein constituted shall comprise area included in the following boundaries:

From point 1, which is the top of a small hill called Na-Con, as shown in the sketch map of the proposed municipality of Trinidad, prepared and submitted on July 12, 1947, by the district engineer of Bohol, in a straight line N. $82^{\circ} 5'$ E. 5 kms. to point 2, which is at the mouth of So-on River; thence S. $3^{\circ} 01'$ W. 5.71 kms. to point 3, which is the So-on Bridge at Km. 105.2 of the Ipil-Ubay road; thence S. $31^{\circ} 15'$ E. 2.65 km. to point 4, which is at Catuogan Bridge built during the Spanish régime; thence S. $34^{\circ} 25'$ W. 16.525 kms. to point 5; the highest point of Cambitoc Hill; thence S. $19^{\circ} 25'$ W. 1.5 km., to point 6, which is the junction of Malitbog brook and Babag creek; thence S. $76^{\circ} 58'$ W. 3.6 kms. to point 7, on Malitbog bridge on the National highway to Carmen at Km. 74.7; thence N. $66^{\circ} 00'$ W. 5.735 kms. to point 8, which is at the junction of Wahig River and the Malitbog brook; thence N. $54^{\circ} 46'$ W. 3.25 kms. to point 9, which is the highest point of Catay-an Hill; thence N. $14^{\circ} 45'$ E. 8.00 kms. to point 10, which is the highest point of Cangmahangin Hill; thence N. $31^{\circ} 31'$ W. 1.3 kms. to point 11, which is the highest point of Cangma-ong Hill; thence S. $73^{\circ} 45'$ W. 7.82 kms. to point 12, the highest point of Tucapon Hill; thence N. $57^{\circ} 25'$ E. 12.9 kms. to point 13, the highest point of Buhian Hill; thence N. $63^{\circ} 07'$ E. 11.7 kms. to point 14, which is identical to point 1, mentioned above.

The municipality of Talibon shall consist of its present territory minus such portion thereof as is included in the area above described.

The municipality of Ubay shall consist of its present territory minus such portion thereof as is included in the area above described.

The municipality of Trinidad herein organized shall assume the payment of seventy-five per centum of the loan of ₱10,000 contracted by the municipality of Talibon with the defunct Agricultural and Industrial Bank, which loan has been transferred to the Rehabilitation Finance Corporation in accordance with Republic Act No. 85.

The organization herein made shall take effect September 1, 1947.

Done at the City of Manila, this 14th day of August, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 81

CREATING A CENTRAL BANK COUNCIL

WHEREAS, the Joint Philippine-American Finance Commission has recommended the establishing of a central bank to meet the monetary and financial problems of the country;

WHEREAS, it is necessary that immediate steps be taken to prepare for the establishment of the bank;

NOW, THEREFORE, I, Manuel Roxas, President of the Philippines, by virtue of the powers vested in me by law, do hereby create and constitute a Central Bank Council which shall be composed of the following:

Hon. Miguel Cuaderno, Sr.	Chairman
Hon. Jose Yulo	Member
Hon. Vicente Carmona	Member
Mr. Delfin Buencamino	Member
Mr. Alfonso Calalang	Member

The functions of the Council shall be:

1. To prepare a detailed statement recommending the necessary changes in the monetary law and defining the organization, purposes, and functions of the central bank;
2. To draft the new monetary and central banking laws in accordance with the principles set forth in the statement;
3. To organize a division of economic and statistical research which could immediately begin to set up those statistical measures which the central bank must have in order to control credit intelligently.

The Council is hereby authorized to call upon any department, bureau or office, agency or instrumentality of the Government for such information and assistance as it may require in the performance of its work and with the approval of the President, the detail of any officer or employee of any Department, bureau, office or any instrumentality of the Government with the Central Bank Council either on full or part time basis.

The Council shall render its report and recommendations to the President of the Philippines from time to time and shall continue to exist until the Central Bank is formally organized.

Done at the City of Manila, this 14th day of August, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 82

ORGANIZING INTO TEN MUNICIPALITIES ALL, EXCEPT THREE, MUNICIPAL DISTRICTS IN THE PROVINCE OF COTABATO AND ANNEXING THE SAID THREE MUNICIPAL DISTRICTS TO THE MUNICIPALITY OF COTABATO.

Upon the recommendation of the Provincial Board of Cotabato, concurred in by the Secretary of the Interior, and pursuant to the provisions of section 68 of the Revised Administrative Code, all the municipal districts in the Province of Cotabato, except the municipal districts of Gambar, Kalanganan, and Tumbao, together with the unexplored areas, and certain barrios or sitios of the municipality of Dulawan, all in the Province of Cotabato, are hereby organized into ten independent municipalities under the names of Pagalungan, Parang, Nuling, Kiamba, Buluan, Kidapawan, Kabakan, Koronadal, Buayan, and Dinaig, with the seats of government at Pagalungan, Parang, Nuling (km. 12-13), Kiamba, Buluan, Kidapawan, Kabakan, Marbel, Dadiangas and Upi, respectively; and the municipal districts of Gambar, Kalanganan and Tumbao are hereby annexed to the municipality of Cotabato. The three municipalities in the Province of Cotabato, as established by section forty of the Administrative Code and Executive Order No. 66, series of 1936, are, therefore, increased to thirteen.

The municipalities as constituted under this Order shall consist of the territory hereunder specified:

1. The municipality of Pagalungan shall consist of the territory comprised in the municipal districts of Pikit-Pagalungan, Silik and Balatikan. The boundary of the municipality of Pagalungan in the northeast, which separates it from the municipality of Kabakan, shall begin from

the northeast corner of the municipal district of Pikit-Pagalungan following a straight line northwesterly, crossing the National highway and Pulangi River to the junction of the Maridagao and Malitubog Rivers.

2. The municipality of Parang shall consist of the territory comprised in the municipal districts of Parang, Bugasan, Buldun and Barira and the island of Bongo.

3. The municipality of Nuling shall consist of the territory comprised in the municipal districts of Nuling, Gubpañgan and Balut.

4. The municipality of Kiamba shall consist of the territory comprised in the municipal districts of Kiamba, Kling and Lebak.

5. The municipality of Buluan shall consist of the territory comprised in the municipal districts of Buluan and Liguasan and the barrios or sitios of Lambayong and Barurao of the municipality of Dulawan. The boundary which separates the municipality of Buluan as herein constituted from the municipality of Dulawan shall begin from Butilen following the crest of the Reina Regente Mountain Range to Pidsandawan along the Dansalan River, following the Dansalan River to Sapakan, thence following the Alah River to a point at Kapingkong, thence in a straight line eastward from Kapingkong, passing through San Felipe and crossing the National highway to the unexplored territory of Malasila where it intersects the Cotabato-Davao boundary on the east.

6. The municipality of Kidapawan shall consist of the territory comprised in the municipal district of Kidapawan together with the unexplored region north of this municipal district to the boundary of Davao province on the east and Bukidnon province on the north, and Pulangi River on the west, and Mlang which is at present a part of the municipal district of Buluan. The boundary between the municipality of Kidapawan and the municipality of Kabakan shall begin from the northeast corner of the municipal district of Liguasan direct to Km. 105 on the Cotabato-Davao road and from there it follows a straight line to where the old boundaries of the municipal districts of Kabakan and Kidapawan meet in the north along the Pulangi River.

7. The municipality of Kabakan shall consist of the territory comprised in the municipal districts of Kabakan, Carmen, Kitubud, and Banisilan.

8. The municipality of Koronadal shall consist of the territory comprised in the municipal districts of Koronadal and Sebu, together with the southern tip of the unexplored territory of Malasila which has not been included in the territory of the municipality of Buluan.

9. The municipality of Buayan shall consist of the territory comprised in the municipal districts of Buayan and Glan.

10. The municipality of Dinaig shall consist of the territory comprised in the municipal districts of Dinaig, Awang, and Salaman.

11. The territory of Cotabato shall consist of its present territory plus the territory comprised in the municipal districts of Kalanganan, Tumbao and Gambar. The municipality of Cotabato is bounded on the north by the Rio Grande River and Libungan River and the Labas Lake, on the east by the municipalities of Dulawan and Midsayap, on the south by the Tamontaka River and the Butiren River to its headwaters at Talayan and on the west by the Illana Bay.

12. The municipality of Dulawan shall consist of its present territory minus the barrios or sitios of Lambayong and Barurao.

This Executive Order shall take effect on this date.

Done at the City of Manila, this 18th day of August, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 83

EXTENDING FURTHER THE PERIODS PROVIDED FOR IN SECTIONS 3, 5, AND 6 OF REPUBLIC ACT NO. 17, ENTITLED "AN ACT TO PROVIDE FOR THE CIRCULATION OF TREASURY CERTIFICATES WITH THE OFFICIAL SEAL OF THE REPUBLIC OF THE PHILIPPINES STAMPED, PRINTED OR SUPERIMPOSED THEREON, AND FOR OTHER PURPOSES" AS AMENDED BY REPUBLIC ACT NO. 92.

By virtue of the powers vested in me by section 7 of Republic Act No. 17, as amended by Republic Act No. 92,

I, Manuel Roxas, President of the Philippines, do hereby further extend for a period of three months the various periods provided for in sections 3, 5, and 6 of Republic Act No. 17, as last extended by Executive Order No. 55, dated May 31, 1947. This extension will expire on November 30, 1947.

Done at the City of Manila, this 21st day of August, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 84

TRANSFERRING THE SEAT OF GOVERNMENT OF
THE MUNICIPALITY OF SAGAY, NEGROS OC-
CIDENTAL, FROM THE POBLACION OF DA-
LUSAN.

Upon the recommendation of the Secretary of the Interior, and pursuant to the provisions of section 68 of the Revised Administrative Code, the seat of government of the municipality of Sagay, Negros Occidental, is hereby transferred from the poblacion to the sitio of Dalusan, barrio of Rizal, of the same municipality.

This Order shall take effect immediately.

Done at the City of Manila, this 26th day of August, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 30

DECLARING THE SECOND SATURDAY OF SEPTEMBER OF EACH YEAR AS ARBOR DAY AND CREATING COMMITTEES FOR THE PURPOSE.

Whereas, man is dependent upon forest trees and cultivated plants; but thousands of valuable trees are wantonly destroyed without benefit to anyone, because people are not informed of their importance; and

Whereas, it is important to set aside a day each year so that through appropriate ceremonies and actual replanting, the people's attention could be drawn to the importance of trees and plants in their everyday life and their interest awakened;

Now, THEREFORE, I, Manuel Roxas, President of the Philippines, by virtue of the powers vested in me by law, do hereby proclaim the second Saturday of September of each year as Arbor Day, to be observed in schools and elsewhere by the planting of trees and plants.

The following Committees, which shall be in charge of the programs to be observed on Arbor Day, are hereby created:

NATIONAL COMMITTEE

1. Secretary of Agriculture and Commerce Chairman
2. Secretary of Instruction Member
3. Director of Forestry Executive Officer
4. Chief Scout Executive, Boy Scouts of the Philippines Member
5. A private citizen to be appointed by the President Member

PROVINCIAL COMMITTEE

1. Provincial Governor Chairman
2. District Forester or Local Forest Officer Executive Officer
3. Division Superintendent of Schools Member
4. Provincial Agricultural Supervisor Member
5. Municipal Mayor of Provincial Capital Member
6. A private citizen to be appointed by the chairman Member

CHARTERED CITY COMMITTEE

1. City Mayor Chairman
2. District Forester or Local Forest Officer Executive Officer
3. Supervising Teacher or Principal Teacher .. Member
4. Local Agronomist Member
5. A private citizen to be appointed by the Chairman Member

MUNICIPAL COMMITTEE

1. Municipal Mayor Chairman
2. Local Forest Officer Executive Officer
3. Supervising Teacher or Principal Teacher .. Member
4. Municipal Agricultural Supervisor Member
5. A private citizen to be appointed by the Chairman Member

(Where there is no Forest Officer in the locality, the Chairman of the Committee shall appoint the Executive Officer thereof.)

The above Committees are hereby empowered to appoint such subcommittees as may be necessary to carry into effect the objectives of this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done at the City of Manila, this 30th day of July, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

[SEAL]

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 31

FIXING AUGUST 16, 1947, AS THE DATE FOR THE
INAUGURATION OF RIZAL CITY

By virtue of the power conferred upon me by section 89 of the Republic Act No. 183, I, Manuel Roxas, President of the Philippines, do hereby fix August 16, 1947, as the date for the inauguration of Rizal City and for the qualification of the City Mayor and the members of the Municipal Board appointed in accordance with the provisions of said section.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done at the City of Manila, this 4th day of August, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

[SEAL]

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

—
MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 32

RESERVING FOR LUMBER PRODUCTION PURPOSES
A PARCEL OF THE PUBLIC DOMAIN LOCATED
IN THE MUNICIPALITY OF NASIPIT, PROVINCE
OF AGUSAN, ISLAND OF MINDANAO.

Upon the recommendation of the Secretary of Agriculture and Commerce, and pursuant to the provisions of section 83 of Commonwealth Act 141, as amended, I hereby withdraw from sale or settlement and reserve for the production of lumber, subject to private rights, if any there be, a parcel of the public domain situated in the municipality of Nasipit, Province of Agusan, Island of Mindanao, to wit:

Beginning at point 1 which is a concrete monument or the northernmost corner of lot No. 617 of B. L. Cad. No. 169 of Nasipit, Agusan; thence following a straight line due east, 270 meters to point 2; thence due south, 770 meters to point 3; thence due west, 520 meters to point 4, or the northwestern corner of lot No. 691 of B. L. Cad. No. 169 of Nasipit; thence following the boundary separating the water line south of Nasipit Harbor and the cadastrated lots in a general southerly, westerly and northerly directions to point 5 which is the southeastern corner of lot No. 622 of B. L. Cad. No. 169 of Nasipit; thence following a straight line due west, 400 meters to point 6; thence due north, 910 meters to point 7; thence due east, 700 meters to point 1, the point of beginning. It comprised, either partly or wholly, lots No. 588, 590, 591, 592, 595, 597, 598, 599, 600, 601, 602, 603, 604, 613, 615, 616, 617, 618, 619, 620, 621, 622, 699, and 700 of B. L. Cad. No. 169 of Nasipit, Agusan, containing a total area of approximately 55 hectares.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done at the City of Manila, this 12th day of August, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

[SEAL]

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 33

CALLING FOR A SPECIAL ELECTION TO FILL AN EXISTING VACANCY IN THE HOUSE OF REPRESENTATIVES.

WHEREAS, the Speaker of the House of Representatives has certified that a vacancy exists in the sixth representative district of the Province of Cebu;

Now, THEREFORE, by virtue of the authority conferred upon me by section 20 of Republic Act No. 180, known as the Revised Election Code, I, Manuel Roxas, President of the Philippines, hereby issue this proclamation and call a special election to take place on Tuesday, the 11th day of November, 1947, in the sixth representative district of the Province of Cebu for the purpose of electing the member who is to fill the unexpired portion of the term of the existing vacancy in the House of Representatives.

The provisions of the Revised Election Code insofar as they are applicable shall be followed in the conduct of the special election herein called.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done at the City of Manila, this 15th day of August, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

[SEAL]

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 34

PROVIDING FOR THE ELECTION OF MEMBERS OF
THE PROVINCIAL BOARD IN THE PROVINCE
OF LANAO, ISLAND OF MINDANAO.

WHEREAS, Republic Act No. 59 has declared the offices of governor and members of the provincial board in Lanao to be elective when the President of the Philippines shall have ascertained and shall so declare by proclamation that the people of said province are ready to elect their provincial governor and the members of the provincial board;

WHEREAS, under the conditions prevailing in the said province it would seem advisable at the present time to authorize the election of only the members of the provincial board as an initial step in the establishment therein of a system of government similar in every respect with the government of regular provinces to afford the people residing therein the opportunity to manage their own affairs to the fullest extent of which they are capable;

NOW, THEREFORE, I, Manuel Roxas, President of the Philippines, pursuant to the authority vested in me under Republic Act No. 59, hereby authorize the election of the two members of the provincial board in Lanao in the next regular election for provincial offices throughout the Philippines, in accordance with the provisions of the Revised Election Code.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done at the City of Manila, this 26th day of August, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

[SEAL]

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 35

PROVIDING FOR THE ELECTION OF MEMBERS OF
THE PROVINCIAL BOARD IN THE PROVINCE OF
BUKIDNON, ISLAND OF MINDANAO.

WHEREAS, Republic Act No. 59 has declared the offices of governor and members of the provincial board of Bukidnon to be elective when the President of the Philippines shall have ascertained and shall so declare by proclamation that the people of said province are ready to elect their provincial governor and the members of the provincial board;

WHEREAS, under the conditions prevailing in the said province it would seem advisable at the present time to authorize the election of only the members of the provincial board as an initial step in the establishment therein of a system of government similar in every respect with the government of regular provinces to afford the people residing therein the opportunity to manage their own affairs to the fullest extent of which they are capable;

NOW, THEREFORE, I, Manuel Roxas, President of the Philippines, pursuant to the authority vested in me under Republic Act No. 59, hereby authorize the election of the two members of the provincial board in Bukidnon in the next regular election for provincial offices throughout the Philippines, in accordance with the provisions of the Revised Election Code.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done at the City of Manila, this 26th day of August, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

[SEAL]

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 36

PROVIDING FOR THE ELECTION OF MEMBERS OF
THE PROVINCIAL BOARD IN THE PROVINCE
OF COTABATO, ISLAND OF MINDANAO.

WHEREAS, Republic Act No. 59 has declared the offices of governor and members of the provincial board in Cotabato to be elective when the President of the Philippines shall have ascertained and shall so declare by proclamation that the people of said province are ready to elect their provincial governor and the members of the provincial board;

WHEREAS, under the conditions prevailing in the said province, it would seem advisable at the present time to authorize the election of only the members of the provincial board as an initial step in the establishment therein of a system of government similar in every respect with the government of regular provinces to afford the people resident therein the opportunity to manage their own affairs to the fullest extent of which they are capable;

NOW, THEREFORE, I, Manuel Roxas, President of the Philippines, pursuant to the authority vested in me under Republic Act No. 59, hereby authorize the election of the two members of the provincial board in Cotabato in the next regular election for provincial offices throughout the Philippines, in accordance with the provisions of the Revised Election Code.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done at the City of Manila, this 26th day of August, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

[SEAL]

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 37

PROVIDING FOR THE ELECTION OF MEMBERS OF
THE PROVINCIAL BOARD IN THE PROVINCE
OF SULU.

WHEREAS, Republic Act No. 59 has declared the offices of governor and members of the provincial board in the Province of Sulu to be elective when the President of the Philippines shall have ascertained and shall so declare by proclamation that the people of said province are ready to elect their provincial governor and the members of the provincial board;

WHEREAS, under the conditions prevailing in said province it would seem advisable at the present time to authorize the election of only the members of the provincial board as an initial step in the establishment therein of a system of government similar in every respect with the government of regular provinces to afford the people residing therein the opportunity to manage their own affairs to the fullest extent of which they are capable;

NOW, THEREFORE, I, Manuel Roxas, President of the Philippines, pursuant to the authority vested in me under Republic Act No. 59, hereby authorize the election of the two members of the provincial board in the Province of Sulu in the next regular election for provincial offices throughout the Philippines, in accordance with the provisions of the Revised Election Code.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done at the City of Manila, this 26th day of August, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

[SEAL]

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 38

PROVIDING FOR THE ELECTION OF MEMBERS OF
THE PROVINCIAL BOARD IN MOUNTAIN PROV-
INCE, ISLAND OF LUZON.

WHEREAS, Republic Act No. 59 has declared the offices of governor and members of the provincial board in mountain Province to be elective when the President of the Philippines shall have ascertained and shall so declare by proclamation that the people of said province are ready to elect their provincial governor and the members of the provincial board;

WHEREAS, under the conditions prevailing in the said province it would seem advisable at the present time to authorize the election of only the members of the provincial board as an initial step in the establishment therein of a system of government similar in every respect with the government of regular provinces to afford the people residing therein the opportunity to manage their own affairs to the fullest extent of which they are capable;

NOW, THEREFORE, I, Manuel Roxas, President of the Philippines, pursuant to the authority vested in me under Republic Act No. 59, hereby authorize the election of the two members of the provincial board in Mountain Province in the next regular election for provincial offices throughout the Philippines, in accordance with the provisions of the Revised Election Code.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done at the City of Manila, this 26th day of August, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

[SEAL]

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 40

REPRIMANDING PROVINCIAL FISCAL LORENZO
COLOSO OF LANAO

This is an administrative case against Provincial Fiscal Lorenzo Coloso of Lanao who stands charged with inefficiency in the performance of official duties. In support of the charge, many criminal cases which were handled by the respondent and dismissed by the Court of First Instance of Lanao are cited.

The respondent denies the charge, but instead of explaining the dismissal of said cases, he merely submitted as part of his comment copies of the orders of dismissal.

From these orders of dismissal, it appears that criminal cases Nos. 2 (People *vs.* Legaspi for *estafa*), 37 (People *vs.* Wabe et al., for illegal use of dynamite), 38 (People *vs.* Atwood for illegal use of dynamite), and 89 (People *vs.* Kailing for theft) were dismissed because when they were called for trial, the respondent was not ready for the reason that he "had not yet conferred with the witnesses for the prosecution." His unpreparedness to enter into trial for the reason stated by him cannot be justified, as the Office of the Fiscal is always furnished in advance with a copy of the court calendar. Of course, it may happen that, due to unavoidable circumstances, witnesses in a case may arrive in court on the very day or hour set for hearing. In such eventuality, the party concerned cannot entirely be blamed for his inability to enter into trial as scheduled. Nevertheless, assuming that this was what had happened in the cases under consideration, still the respondent should have asked the court for a reasonable time within which to confer with the witnesses for the Government. Moreover, the orders of dismissal fail to show that the respondent had exerted efforts to oppose the dismissal of said cases upon motion of the defense which took advantage of his unpreparedness.

It also appears that criminal case No. 80 (People *vs.* Sayri for attempted robbery) and criminal case No. 83 (People *vs.* Magoromba et al., for robbery) were dismissed upon motion of the respondent on the ground that the accused had escaped from jail and that their apprehension was uncertain. The respondent's action was improper because with the dismissal of the cases against them, the offenders can no longer be arrested even if subsequently located.

It is clear from the foregoing that the respondent has not shown due diligence and zeal in the performance of his official duties. Wherefore, he is hereby reprimanded and warned that similar conduct in the future will be dealt with more severely.

Done at the City of Manila, this 12th day of August, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 41

PRESCRIBING CERTAIN RULES GOVERNING THE PROCEDURE FOR THE GRANT OF BENEFITS CONFERRED BY REPUBLIC ACT NO. 186.

WHEREAS, to carry out the provisions of Republic Act No. 186 approved on June 21, 1947, which confers certain benefits on public school teachers and other employees of the Government, it is desirable to establish a uniform policy and procedure for the grant of such benefits;

NOW, THEREFORE, I, Manuel Roxas, President of the Philippines, by virtue of the powers vested in me by law, do hereby prescribe the following rules:

1. Any teacher or employee claiming the benefits of Republic Act No. 186 shall file with the Bureau of Civil Service a verified application in the form and manner to be prescribed by the Commissioner of Civil Service.

2. The degree or grade required for the eligibility applied for must have been obtained or completed on the date from which the applicant claims to have begun his ten years of continuous service or on a date prior thereto.

3. Applicants must have rendered continuous service for ten years on or before June 21, 1947, and must be in the service on said date. For purposes of counting ten years of service, the period from January 1, 1942 to December 31, 1945, shall be excluded if the applicant rendered no service during said period; *Provided*, That service in the armed forces during said period, duly proved, may be considered; *And provided, finally*, That the non-rendition of

service from January 1, 1942 to the date on which an applicant may have been recalled to the service shall not be taken as breaking the continuity of his service, if he can otherwise show a full ten-year service interrupted only by the hiatus from January 1, 1942 to the date of his recall.

4. An applicant claiming senior teacher or junior teacher eligibility will not be permitted to offer non-teaching experience for purposes of completing the required ten years' continuous service.

The Commissioner of Civil Service shall prepare and print such forms as may be necessary to carry out the provisions of Republic Act No. 186 and of this Order and otherwise to perform such acts as may give due effect thereto. His decisions in all cases coming under this law shall be final unless reversed by the President on appeal.

Done at the City of Manila, this 12th day of August in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER 42

AMENDING PARAGRAPH 3 OF ADMINISTRATIVE ORDER NO. 96, DATED MAY 30, 1939, ENTITLED "CREATING PRESIDENT ROOSEVELT'S POLIOMYELITIS COMMITTEE."

The third paragraph of Administrative Order No. 96, dated May 30, 1939, is hereby amended to read as follows:

"NOW THEREFORE, I, Manuel Roxas, President of the Philippines, by virtue of the powers vested in me by law, do hereby create a committee to be known as President Roosevelt's Poliomyelitis Committee, for the purpose of handling the funds realized from the holding of such balls. The Committee shall be composed of the following:

The Secretary of Health and Public Welfare	Chairman
The Director of Health	Member
The Director of Public Welfare	Member
The City Mayor of Manila	Member

Done at the City of Manila, this 12th day of August, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 43

EXONERATING MAYOR VICENTE DEL ROSARIO OF
THE CITY OF CEBU FROM ADMINISTRATIVE
CHARGES.

This is an administrative case against Mayor Vicente del Rosario of the City of Cebu on the following charges:

- (1) That respondent illegally collected from June 25, 1946 to September 30, 1946, house allowance at the rate of ₱100 a month;
- (2) That he loaned ₱650 to the Cebu Retailer's Cooperative, Inc., with interest at 10 per cent per month;
- (3) That he granted a permit to hold cockfighting during days other than Sundays and holidays;
- (4) That he connived with his driver, Baltazar Reyes, in treacherously and maliciously assaulting Assistant City Engineer Arvisu;
- (5) That he employed Detective Inspector Jose Sanchez who was alleged to be a well-known pimp and whom he allegedly used in collecting bribes;
- (6) That he summarily dismissed the city physician and many employees of the City Government without previous investigation;
- (7) That during his incumbency he entered into a contract of partnership with other parties to deal in lumber, in which agreement he agreed to act as sales manager of the association for the Province of Cebu and for the City of Cebu;
- (8) That he stated falsely and maliciously that the copra ordinance vetoed by him had been tampered with by the Municipal Board;
- (9) That he slandered unjustly and maliciously the President of the Municipal Board in accusing the latter in a letter to Senator Sotto of having enriched himself unlawfully in the discharge of his office;
- (10) That he instructed a member of the Police Department to manhandle detainees in the course of investigation conducted; and
- (11) That he is of violent character and is not on good terms with all the Department Heads of the City of Cebu.

These charges were investigated by a Committee specially constituted by me and composed of Assistant Solicitor-General Carmelino G. Alvendia, as Chairman, and First Assistant City Fiscal Agustin P. Montesa of Manila and

Chief Supervising Auditor Severo de Ungria of the General Auditing Office, as members. After hearings conducted in the City of Cebu at which witnesses testified for and against the respondent, the Committee recommended his exoneration.

CHARGE I

The respondent explained and the Committee found that the house in which he was then living belonged exclusively to his mother and that even if the house where respondent lived belonged to him, he would still be entitled to said allowance in accordance with Opinion No. 35, series of 1939, of the Secretary of Justice, citing the case of *Regalado vs. Yulo*, 33 O. G. 925.

CHARGE II

At the instance of Mr. Alfredo Cruz, President of the Cebu Retailers' Cooperative, Inc., the respondent had agreed to advance the sum ₱650 for the use of said corporation for an indefinite period not exceeding one year, with the understanding that the respondent would be given a "benefit" for the use of his money, although he did not even know in what the benefit consisted. Even if the ₱65 received by respondent were considered an interest on the principal of ₱650 delivered by respondent, the same would not be usurious because the ₱650 having been delivered for repayment within one year, the fact that it was paid after one or three months with full interest for one year does not constitute usury, as the Usury Law even allows a creditor to collect interest in advance for a period not exceeding one year, and if the debtor pays the obligation within a shorter period, he is not entitled to a rebate on the interest.

CHARGE III

The only evidence presented in support of this charge is the testimony of the Chief of Police who alleges that, although he did not actually see that there was a cockfight, he saw people gathered in the cockpit one day which was not Sunday or holiday. He claims to have been informed by Mr. Cepeda, president of the association which operated the cockpit, that the latter had a verbal permit from the respondent. However, he admits that he made no further investigation on the matter and that he did not even ask the Mayor about the alleged verbal permit.

CHARGE IV

In connection with this charge, there was evidence that in the course of a discussion between the respondent and Assistant City Engineer Arvisu, and when the discussion was developing into a quarrel the respondent's driver who

was waiting in his jeep outside the restaurant where the incident took place, entered the discussions and assaulted Arvisu. According to Mr. Morelos, an eye-witness to the incident and one of the witnesses for the complainant, there was no preconceived plan between the respondent and his driver to fight Arvisu. It is clear, therefore, that the respondent cannot be blamed for the physical injuries inflicted by his driver.

CHARGE V

The respondent admits having appointed Jose Sanchez but claims that the appointment was made upon the recommendation of Senators Sotto and Cuenco and of President Morelos of the Municipal Board. He claims further that he did not know that Jose Sanchez was a pimp. No evidence whatsoever was presented regarding the alleged collection of bribes by Jose Sanchez or by anybody.

CHARGE VI

The City Physician, Doctor Yap, testifying as a witness for the complainants, declared that the incident about his case could have been the result of a misunderstanding. It appears that when the respondent assumed office, the city physician was not on duty, as he was then on leave. Believing that the city physician had left the office for good, he being an appointee of the previous Administration, the respondent appointed Doctor Baltazar to take his place. However, when Doctor Yap returned, the respondent realized that the former had not resigned. The case was referred to the Department of Health and Public Welfare, and the respondent respected the decision of the Department in favor of the former incumbent.

As regards the other employees dismissed, many of whom were from the Police Department, the respondent explains that said employees had been appointed in an acting capacity and had taken active part in the last elections in violation of the Civil Service rules, in view of which he replaced them.

Explaining the removal of the chief clerk of the Municipal Board, the respondent claims that the removal was made in pursuance of a resolution of the Municipal Board and the policy of the Administration that all pre-war incumbents who wanted to return to their positions should be allowed to do so.

CHARGE VII

There is no dispute as to the respondent having entered into a partnership agreement with one Feliciano Larrazabal to engage in the lumber business under the name of "Republic Lumber" with head offices in the Province of Leyte

and having agreed to act as sales manager for the Province of Cebu as well as for the City of Cebu. It is a fact, however, that the "Republic Lumber" did not do business during his incumbency. Moreover, the partnership never engaged in the lumber business in the City of Cebu, and the respondent never actually performed the duties of sales manager up to the date of the investigation.

While his acceptance of the position of sales manager of the "Republic Lumber" was improper, yet as no transactions were actually consummated and no improper motives have been shown, I find no sufficient basis for taking drastic action against respondent.

CHARGE VIII

The respondent admits having stated in his veto of said municipal ordinance that the same had been tampered with by the Municipal Board. He explains, however, that what he meant by the word "tampered" was that the Municipal Board had been frequently changing or modifying the provisions of the ordinance with reference to the amount of tax imposed on merchants engaged in the buying and selling or storing of copra. I am satisfied that the respondent did not use the word in question with malice.

CHARGE IX

I am satisfied that the statement of the respondent in said letter was not made with malice, but merely for the information of Senator Sotto.

CHARGE X

There is conflicting evidence on this point. The Committee found that all the respondent meant was that force should be used by the police if necessary in apprehending criminals but that, once apprehended, the latter should not be subjected to "third degree" for the purpose of compelling them to talk. As a matter of fact, there is no evidence that violence was illegally inflicted on arrested prisoners or that respondent had ordered any specific person to be manhandled or maltreated.

CHARGE XI

While there is evidence tending to show that the respondent is a man of violent temper, it seems more accurate to state that he is a man of action.

The charge that he is not on good terms with the Department Heads of the City of Cebu has not been substantiated. His incident with Assistant City Engineer Arvisu does not constitute a sufficient basis for the conclusion that he is not on good terms with the Engineering Department. The only other Department where he has had some

trouble is the Police Department, with the functions of which he had been allegedly unduly interfering, sometimes giving orders directly to the policemen without coursing them to the Chief of Police. The respondent justifies his actuations on the ground that he suspected some of the officers of the Police Department to be in connivance with malefactors and gamblers.

In view of all the foregoing, the respondent is hereby exonerated and immediately reinstated as Mayor of the City of Cebu. However, in the interest of the service, he is hereby enjoined to sever his connection as sales manager of the "Republic Lumber" and warned against any transaction being had between said partnership and the Government of the City of Cebu.

Done at the City of Manila, this 23rd day of August, in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

REPUBLIC ACTS

H. No. 1202

FIRST CONGRESS OF THE REPUBLIC OF THE PHILIPPINES *Second Session*

Begun and held at the City of Manila on Monday, the twenty-seventh day of January, nineteen hundred and forty-seven

[REPUBLIC ACT No. 196]

AN ACT TO GRANT TO THE MUNICIPALITY OF BASEY, SAMAR, A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT, AND POWER SYSTEM.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to the municipality of Basey, Samar, for a period of twenty-five years from the approval of this Act, the right, privilege, and authority to construct, maintain, and operate an electric light, heat, and power plant for the purpose of generating and distributing electric light, heat, and/or power for sale within the limits of its territorial jurisdiction.

SEC. 2. This Act shall take effect upon its approval.

Enacted, without Executive approval, June 22, 1947.

◆
H. No. 1239

[REPUBLIC ACT No. 197]

AN ACT CREATING THE MUNICIPALITY OF LEMERY IN THE PROVINCE OF ILOILO

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The barrios of Lemery, Tabunan, Tuburan, Nagsulang, Daga-an, Tuguis, Singcua, Agpipili, Pacuan, Milan, Alagiñgay, Tuga, Bajo, San Antonio, Capeñahan, Bankal, Geroñgan, Omio, Nasapahan, Abuac-Dalipe, San Jose, Cabangtohan, Dapdapan, Butuan, Anabo, and Buena-vista are separated from the municipality of Sara and constituted into a new municipality to be known as the municipality of Lemery in the Province of Iloilo, with the present barrio of Lemery as the seat of the government.

SEC. 2. The new municipality shall be organized on January one, nineteen hundred and forty-eight. The elective officials of said municipality shall be appointed by the President of the Philippines and shall hold office until their successors shall have been elected and qualified.

SEC. 3. This Act shall take effect upon its approval.

Enacted, without Executive approval, June 22, 1947.

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

DEPARTMENT OF THE INTERIOR

DEPARTMENT ORDER No. 10

August 22, 1947

PUBLISHING CLASSIFICATIONS OF THE PROVINCE OF ROMBLON AND ITS MUNICIPALITIES

The classification of the Province of Romblon and the municipalities therein made under date of August 7, 1947 by the Office of the President of the Philippines, pursuant to the provisions of Republic Act No. 130 and on the basis of the average income furnished by the General Auditing Office, is hereby published for the information and guidance of all concerned:

Province of Romblon	4th class
Municipality of Badajos	4th class
Municipality of Cajidiocan	4th class
Municipality of Concepcion	5th class
Municipality of Corcuera	5th class
Municipality of Despujols	4th class
Municipality of Jones	5th class
Municipality of Looc	4th class
Municipality of Magdiwang	5th class
Municipality of Odiongan	3rd class
Municipality of Romblon	3rd class
Municipality of San Fernando	4th class
Municipality of Santa Fe	5th class

JOSE C. ZULUETA
Secretary of the Interior

PROVINCIAL CIRCULAR (Unnumbered)

August 22, 1947

SUSPENSION OF MUNICIPAL ELECTIVE OFFICIALS BY PROVINCIAL GOVERNORS DURING PRE-ELECTION DAYS.

To Provincial Governors:

Republic Act No. 180, otherwise known as the Revised Election Code, fixes the date of the next regular elections for national and provincial, city and municipal offices on the second Tuesday of November of this year, or on November 11, 1947. In order to insure free, honest and orderly elections and to avoid even the semblance of interference with the lawful exercise of the right of suffrage, the attention of provincial governors is called to the necessity of exercising the utmost caution in suspending municipal elective officials. Henceforth

and until the coming elections are over, no municipal elective officials should be suspended from office, except for flagrant violation of law or serious irregularities demanding immediate action, and in no case shall any suspension be made without securing by telegram or letter the previous approval of this Department, specifying therein the charges against the official whose suspension is sought and the exceptional reasons why he should be suspended.

Strict compliance herewith is hereby enjoined.

JOSE C. ZULUETA
Secretary of the Interior

DEPARTMENT OF JUSTICE

ADMINISTRATIVE ORDER No. 303

June 7, 1947

AUTHORIZING JUDGE OF FIRST INSTANCE EULOGIO DE GUZMAN TO HOLD COURT IN THE PROVINCE OF PANGASINAN.

In the interest of the administration of justice and with the approval of the Supreme Court, the Hon. Eulogio De Guzman, Judge of the Second Judicial District, Nueva Vizcaya, is hereby authorized to hold court in the Province of Pangasinan beginning July 1, 1947, for the purpose of trying all kinds of cases and to enter final judgments therein.

ROMAN OZAETA
Secretary of Justice

ADMINISTRATIVE ORDER No. 305

June 17, 1947

AUTHORIZING JUDGE-AT-LARGE PEDRO VILLAMOR TO DECIDE IN PANGASINAN CRIMINAL CASES NOS. 14153 AND 14196 OF THE COURT OF FIRST INSTANCE OF LAGUNA.

In the interest of the administration of justice and pursuant to his request, the Hon. Pedro Villamor, Judge-at-Large, is hereby authorized to decide in Pangasinan, as soon as practicable, criminal cases Nos. 14153 and 14196 of the Court of First Instance of Laguna, which were tried by him while holding court session in said province.

ROMAN OZAETA
Secretary of Justice

ADMINISTRATIVE ORDER No. 309

June 23, 1947

**AUTHORIZING CADASTRAL JUDGE OF FIRST INSTANCE
EDILBERTO BAROT TO HOLD COURT IN ILIGAN AND
KOLAMBUGAN, LANAO.**

In the interest of the administration of justice and pursuant to his request, the Hon. Edilberto Barot, Judge of First Instance (Cadastral), is hereby authorized to hold court in Iligan and Kolambugan, Lanao, any time before September, 1947, for the purpose of trying all kinds of cases and to enter final judgments therein.

ROMAN OZAETA
Secretary of Justice

ADMINISTRATIVE ORDER No. 312

June 24, 1947

**AUTHORIZING CADASTRAL JUDGE OF FIRST INSTANCE
RAMON O. NOLASCO TO HOLD COURT IN THE PROV-
INCE OF TARLAC.**

In the interest of the administration of justice, the Hon. Ramon O. Nolasco, Judge of First Instance (Cadastral), is hereby authorized to hold court in the Province of Tarlac, beginning July 1, 1947 or as soon thereafter as practicable, for the purpose of trying all kinds of cases and to enter final judgments therein.

ROMAN OZAETA
Secretary of Justice

ADMINISTRATIVE ORDER No. 317

July 24, 1947

**AUTHORIZING CADASTRAL JUDGE OF FIRST INSTANCE
SEGUNDO MARTINEZ TO HOLD COURT IN THE
MUNICIPALITY OF LIGAO, PROVINCE OF ALBAY.**

In the interest of the administration of justice, and pursuant to his request, Hon. Segundo Martinez, Judge of First Instance (Cadastral), is hereby authorized to hold court in the municipality of Ligao, Province of Albay, beginning August 1, 1947, for the purpose of trying all kinds of cases and to enter final judgments therein.

ROMAN OZAETA
Secretary of Justice

ADMINISTRATIVE ORDER No. 318

July 26, 1947

**AMENDING ADMINISTRATIVE ORDER NO. 310, DATED
JUNE 24, 1947**

Administrative Order No. 310 of this Department dated June 24, 1947, is hereby amended so as to read as follows:

"In the interest of the administration of justice, the Hon. Clementino V. Diez, Judge of the Second

Branch, twenty-first Judicial District, is hereby authorized to hold court during the month of September, 1947, for the purpose of trying cases coming from said municipality and the municipalities of Pintuyan, Liloan, Anahawan, Hinundayan and Hinunangan, same province, and to enter final judgments therein."

ROMAN OZAETA
Secretary of Justice

ADMINISTRATIVE ORDER No. 319

July 29, 1947

**AUTHORIZING JUDGE-AT-LARGE PEDRO VILAMOR TO
DECIDE IN THE PROVINCE OF PANGASINAN CIVIL
CASE NO. 819 OF THE COURT OF FIRST INSTANCE
OF MISAMIS OCCIDENTAL.**

In the interest of the administration of justice, the Hon. Pedro Villamor, Judge-at-Large, is hereby authorized to decide in the Province of Pangasinan, civil case No. 819 of the Court of First Instance of Misamis Occidental, entitled "Petra Manliguez et al., plaintiffs, vs. Esperante Manliguez et al., defendants" which was previously tried by him while presiding over the court of first instance of said province.

ROMAN OZAETA
Secretary of Justice

ADMINISTRATIVE ORDER No. 320

August 4, 1947

**AUTHORIZING JUDGE OF FIRST INSTANCE DEMETRIO
B. ENCARNACION TO HOLD COURT IN THE MUNI-
CIPALITIES OF PAGADIAN, AURORA AND SINDA-
NGAN, PROVINCE OF ZAMBOANGA.**

In the interest of the administration of justice, the Hon. Demetrio B. Encarnacion, Judge of First Instance (Cadastral), is hereby authorized to hold court in the municipalities of Pagadian, Aurora and Sindangan, Province of Zamboanga, beginning September 8, 1947 or as soon thereafter as practicable, for the purpose of trying all kinds of cases and to enter final judgments therein.

ROMAN OZAETA
Secretary of Justice

ADMINISTRATIVE ORDER No. 321

August 6, 1947

**AUTHORIZING JUDGE-AT-LARGE BERNARDINO QUITO-
RIANO TO HOLD COURT IN THE MUNICIPALITY OF
BALLESTEROS, PROVINCE OF CAGAYAN.**

In the interest of the administration of justice, the Hon. Bernardino Quitoriano, Judge-at-Large, is hereby authorized to hold court in the municipality of Ballesteros, Province of Cagayan, from August 16, 1947, and in the Province of Ilocos Norte from

September 16, 1947, or as soon thereafter as practicable, for the purpose of trying all kinds of cases and to enter final judgments therein.

ROMAN OZAETA
Secretary of Justice

ADMINISTRATIVE ORDER NO. 322

August 14, 1947

**AUTHORIZING CADASTRAL JUDGE OF FIRST INSTANCE
EUSEBIO F. RAMOS TO HOLD COURT IN THE PROVINCE OF CAMARINES NORTE.**

In the interest of the administration of justice, the Hon. Eusebio F. Ramos, Judge of First Instance (Cadastral), is hereby authorized to hold court in the Province of Camarines Norte, beginning August 25, 1947 or as soon thereafter as practicable, for the purpose of trying all kinds of cases and to enter final judgments therein.

ROMAN OZAETA
Secretary of Justice

**DEPARTMENT OF AGRICULTURE
AND COMMERCE**

FORESTRY ADMINISTRATIVE ORDER NO. 9

June 21, 1947

AMENDMENT TO FORESTRY ADMINISTRATIVE ORDER NO. 15 DATED JULY 31, 1935, AS AMENDED, KNOWN AS THE RULES AND REGULATIONS PRESCRIBING SCHEDULE OF CHARGES FOR SERVICES RENDERED AND ARTICLES SOLD OR FURNISHED.

1. Section 14 of Forestry Administrative Order No. 15 as amended by Forestry Administrative Order No. 7 is hereby further amended to read as follows:

14. The following schedule of fees shall be followed:

Railroad ties, not exceeding one thousand pieces	₱0.05 per tie
Railroad ties, over one thousand04 per tie
For grading and/or identification of lumber for each one thousand Bd. Ft. or fraction thereof	3.00
For grading or identification and/or scaling of logs either squared or round, for each one thousand Bd. Ft. or fraction thereof (B. F. scale)	1.00
For tallying lumber not exceeding ten thousand Bd. Ft....	20.00

For each additional one thousand Bd. Ft. or fraction thereof 1.50

For this purpose, a cubic meter is equivalent to 424 board feet.

2. *Date of taking effect.*—This order shall take effect on July 1, 1947.

JOSE S. CAMUS
*Under Secretary of Agriculture
and Commerce*

Recommended by:

FLORENCIO TAMESIS
Director of Forestry

PHILIPPINE SUGAR ADMINISTRATION

PHILIPPINE SUGAR ORDER NO. 1,
S. 1947-48

September 1, 1947

1947-48 SUGAR QUOTAS

Pursuant to the provisions of Act No. 4166, as amended by Commonwealth Acts Nos. 77 and 323, and by virtue of the authority vested in me by Executive Order No. 118 of the President of the Philippines, it is hereby ordered that:

1. (a) There is allotted as to the quota of centrifugal sugar which may be transported to and entered in the United States during the calendar year 1948 of 952,000 short tons, commercial weight, of which not to exceed 56,000 short tons, commercial weight, may be filled by refined sugar.

(b) This quota of 952,000 short tons, commercial weight, is allocated to the mill companies and planters on the basis of coefficient and planters' rights set forth in Executive Order of the Governor-General No. 900 and its supplement, as such order may have been or may be modified by entries in the District Transfer and Planters' Registries lawfully made under the terms of Executive Orders of the Governor-General Nos. 873 and 885. The allocation made in this Sub-section shall be evidenced and enforced by official Export Receipt Permits—1948, issued under authority of the Philippine Sugar Administrator.

(c) The refined sugar quota of 56,000 short tons is allocated, as prescribed in section 211 (c) of Public Act No. 371, of the Congress of the United States, approved April 30, 1946, otherwise known as the Philippine Trade Act of 1946, to the producers of such refined sugar proportionately on their exportation to the United States in the calendar year 1940.

2. (a) There is allotted a quota of centrifugal sugar which may be manufactured during the crop year 1947-48 for consumption in the Philippines, either in its original form or as "washed" or refined sugar, of 90,000 short tons, commercial weight. In addition, there is hereby reserved another 60,455 short tons which may, in whole or part, as the circumstances demand, be reallocated to the operating mill districts. For this purpose, 25 per cent of the weekly output of each mill company and planters shall be set aside until the said 90,000 short tons shall have been fully covered.

(b) This quota of 150,455 short tons, commercial weight, is allocated to the mill companies and planters on the basis of the coefficients and planters' right set forth in Executive Order of the Governor-General No. 901 and its supplement, as such order may have been or may be modified by entries in the District Transfer and Planters' Registries lawfully made under the terms of Executive Orders of the Governor-General Nos. 873 and 885. The allocation made in this sub-section shall be evidenced and enforced by Official Permits for sale of sugar for consumption in the Philippines—1948, issued under the authority of the Philippine Sugar Administrator.

(c) Of the quantity of sugar allocated in sub-section 2(a) above, 14,102.247 short tons, commercial weight, shall be allocated to the Rosario, marginal and submarginal mill district as follows:

37—Rosario	4,838.364 short tons
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MARGINAL

5—Balanga	821.000 short tons
10—Cabiao	1,153.000 short tons
29—Manaoag	2,332.500 short tons
31—Norte	2,063.000 short tons

SUBMARGINAL

23—Leonor	864.000 short tons
25—Lourdes	931.000 short tons
27—Mabalacat	1,096.000 short tons
47—University	3,383 short tons

Total	14,102.247 short tons
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3. There will be no allocation for emergency reserve sugar for the 1947-48 crop.

4. The "A" and "B" production allowances of non-operating mill districts will be allocated by the Administrator to the operating mill districts as he sees fit.

V. G. BUNUAN

*Technical Assistant, Office of the President
Officer-in-Charge, Phil. Sugar Administration*

Approved:

EMILIO ABELLO
Chief of the Executive Office

DEPARTMENT OF NATIONAL DEFENSE

RULES AND REGULATIONS GOVERNING THE USE OF GOVERNMENT AIR NAVIGATION FACILITIES AND PROVIDING THE PAYMENT OF THE USE THEREOF.

By virtue of the authority vested in me by Republic Act No. 125, the following Rules and Regulations governing the use of government air navigation facilities and providing the payment of the use thereof by duly licensed private or commercial air service operators are hereby established as follows:

Sections:

1. Definitions
2. General Rules and Regulations
 - (a) Director
 - (b) Restricted area
 - (c) Particular areas
 - (d) Conduct of business or commercial activity
 - (e) Soliciting
 - (f) Taxicabs, busses, jeepneys, PU cars, etc.
 - (g) Advertisements
3. Charges and Fees
 - (a) Landing fees
 - (b) Rentals
 - (c) Concessions or commissions
4. Manner and Date of Payment
5. General Motor Vehicle Regulations
 - (a) Motorized equipment
 - (b) Speed
 - (c) Accident reports
 - (d) Parking
 - (e) Busses
6. General Rules of Conduct
 - (a) Gambling
 - (b) Sanitation
 - (c) Airport and equipment
 - (d) Weapons, explosives and inflammable material
 - (e) Preservation of property
7. Fire Hazards
 - (a) Storage
 - (b) Waste
 - (c) Smoking
 - (d) Fueling operations
8. Penalties
9. Amendment, etc.
10. Effective Date

SECTION 1. *Definitions:*

- (a) Director—Means the Director of the Bureau of Aeronautics.

(b) Bureau—Means the Bureau of Aeronautics.
 (c) Person—Means any individual, firm, copartnership, corporation, company association, or body political; and includes any trustee, receiver, assignee, or other similar representatives thereof.

(d) Air Navigation Facility—Shall include any airport, emergency landing field, light or other signal structure, radio directional findings facility, radio or other electrical communication facility and any other structure or facility used as an aid to air navigation owned by the Government.

(e) Airport—Means any locality, either on water or on land, owned by the Government which is adopted for the landing and taking off of aircraft, or a place used regularly for receiving or discharging passengers or cargo by air.

Airports are classified on the past year's average number of landings per month. This classification of airports is only for the purpose of fixing the herein-enumerated charges and may be subject to revision.

Type I airports: With 200 chargeable landings or over per month by all air carriers.

Type II airports: With 100 or over but less than 200 chargeable landings per month by all air carriers.

Type III airports: With 50 or over but less than 100 chargeable landings per month by all air carriers.

Type IV airports: With less than 50 chargeable landings per month by all air carriers.

(f) Landing—Shall be deemed to be the arrival of aircraft for the purpose of loading or unloading passengers, mail, express and freight.

(g) Gross weight—Shall be deemed to be that weight specified by the license for the particular aircraft granted by the Bureau of Aeronautics.

SECTION 2. General Rules and Regulations:
 The following general rules and regulations governing use of Government-owned airports are adopted:

(a) Director: All persons on any part of the property comprising the airport shall be governed

by the regulations prescribed in this part and by orders and instructions of the Director relative to the use or occupation of any part of the property comprising the airport.

(b) Restricted area: No person shall enter any restricted areas posted as being closed to the public except upon written permission by the Director.

(c) Particular areas: No person shall enter upon the levy road, landing field, runway, or taxi-strips, except:

1. Persons assigned to duty therein;
2. Authorized representatives of the Director;
3. Passengers under appropriate supervision, entering the apron for the purpose of embarkation and debarkation.

(d) Conduct of business or commercial activity: No person shall engage in any business or commercial activity of any nature whatsoever on the airport except with the approval of the Director or his duly authorized representative, and under such terms and conditions as may be prescribed.

(e) Soliciting: No person shall solicit funds for any purpose on the airport without the permission of the Director.

(f) Taxicabs, busses, jeepneys, PU cars, etc.: No person shall operate taxicabs, busses, jeepneys, PU cars, or other transportation carrying passengers for hire from the airport unless such operation is with the approval of the Director or his duly authorized representative and under such terms and conditions as he may prescribe.

(g) Advertisements: No person shall post, distribute, or display signs, advertisements, circulars, printed or written matter at the airports except with the approval of the Director and in such manner as he may prescribe.

SECTION 3. Charges and Fees.—The following charges and fees shall be imposed for the use of Government-owned airports.

(a) Landing fees: (Per landing)

Flights	Type I airports	Type II airports	Type III airports	Type IV airports	Gross weight of aircraft
Scheduled-----	₱6.00 12.00 30.00	₱5.00 10.00 25.00	₱3.00 8.00 20.00	₱2.00 7.00 12.00	Less 10,000 lbs. 10,000-30,000 lbs. Over 30,000 lbs.
Non-scheduled-----	10.00 25.00 35.00	9.00 20.00 30.00	8.00 15.00 25.00	6.00 12.00 20.00	Less 10,000 lbs. 10,000-30,000 lbs. Over 30,000 lbs.
Chartered, industrial, agricultural, other commercial air ser- vice.	15.00 30.00 45.00	12.00 25.00 40.00	10.00 20.00 35.00	8.00 15.00 30.00	Less 10,000 lbs. 10,000-30,000 lbs. Over 30,000 lbs.

The following flights are exempted from landing fees:

1. Philippine Army and U. S. Army flights.
2. Private flying.
3. Flights in connection with flying schools or any flight instructions.
4. Flights in connection with airplane check flights, pilot check flights, testing, training, or inspection operations.

5. Philippine Government or charitable flights duly approved by the Director.

These landing fees shall apply only to domestic operation or flights. However, pending the issuance of different set of charges the above fees shall also apply to international flights.

(b) Rentals: Rentals of land and building: Upon terms and conditions prescribed by the Director.

(e) Concessions or Commissions: (Airports classified as in landing fees)

Aviation gas and oil companies	P0.03 per gallon on aviation gasoline sold. 0.05 per gallon on lubricating oil sold. 0.005 per pound on grease oil.			
Commissions or concessions		Type I airports	Type II airports	Type III airports
Sari-sari store.....	Monthly fee	5% gross income.		
Restaurants and refreshments.....	Monthly fee	5% gross income.		
Recreation hall.....	Monthly fee	5% gross income.		
Taxi-cab.....	Initial fee...	200.00	100.00	
Do.....	Per trip	.20	.20	
Bus commission.....	Initial fee...	200.00		
Per passenger.....	Fee trip....	.05		
PU cars.....	Per trip	.30		
Jeepney commission.....	Initial fee...	50.00	25.00	
Do.....	Per trip	.20	.20	.20

SECTION 4. Manner and Date of Payments.—The above quoted charges and fees must be paid by airlines directly with the Bureau of Aeronautics not later than the 20th day of the succeeding month. Concessionaires must pay their fees either directly with the Bureau or with its duly authorized representative not later than the 20th day of the succeeding month. Printed receipts duly signed will be issued upon payment. These charges and fees shall accrue from the date of approval of these rules and regulations by the Secretary of National Defense.

SECTION 5. General Motor Vehicle Regulations.—No person shall operate any motor vehicle on the airport otherwise than in accordance with the general rules prescribed herein or later to be issued by the Director for the control of such vehicles, except when given special instructions by authorized employees of the airport, or in cases of emergency involving danger to life or property.

(a) Motorized equipment:—No person shall operate any motorized equipment on the apron of the airport or anywhere on the aircraft landing area except:

1. Persons assigned to duty thereon and who have been issued an operator's certificate by the Director;
2. Persons specifically authorized by the Director.

(b) Speed: No person shall operate a motor vehicle of any kind on the roadways of the airport in excess of the speed limits prescribed by the Director

or his authorized representative and indicated by posted traffic signs. Motor vehicles shall be so operated as to be under safe control at all times, weather and traffic conditions considered.

(c) Accident reports: All persons involved in any accident on the airport and all witnesses thereto shall make a report to the Director or to the nearest employee of the Bureau of Aeronautics, together with their names and addresses.

(d) Parking: No person shall park a motor vehicle on the airport other than in areas specifically established for parking and in the manner prescribed by the Director or his duly authorized representative. No person shall park any motor vehicle in restricted or reserved area unless authorized to do so.

(e) Busses: No carrier by motor bus for hire shall load or unload passengers at the airport at any place other than that designated by the Director or his duly authorized representative.

SECTION 6. General Rules of Conduct.—No person shall commit any disorderly, obscene, or indecent act or commit any act of nuisance on the airport.

(a) Gambling: No person shall engage in or conduct gambling in any form or operate gambling devices anywhere on the airport.

(b) Sanitation: No person shall dispose of garbage, papers, or refuse or other material on the airport except in the receptacles provided for that purpose.

(c) Airport and equipment: No person shall interfere, tamper with or injure any part of the airport or any equipment thereof.

(d) Weapons, explosives, and inflammable material: No persons except peace officers, airport or air carrier employees or members of the Armed Forces of the Philippines on official duty shall carry weapons, explosives, or inflammable material on the airport without the written permission of the Director or his duly authorized representative.

(e) Preservation of property: No person shall—

1. Destroy, injure, deface or disturb in any way any building, sign, equipment, marker, or other structure, tree, flower, lawn, or other public property on the airport.
2. Trespass on lawns and seeded area on the airport.
3. Abandon any personal property on the airport.

SECTION 7. Fire Hazards.—No person shall conduct any open flame operation on the airport grounds, or part thereof unless specifically authorized by the Director.

(a) Storage: No person shall store or stock materials or equipment on the airport in such manner as to constitute a fire hazard.

(b) Waste: Lessees or concessionaires selling aviation gas or oil shall provide metal receptacles with self-closing covers for the storage of oily wastes, rags, and other rubbish and all such waste shall be removed daily.

(c) Smoking: No person shall smoke in any place on the airport where it is specifically prohibited by the Director or his duly authorized representative.

(d) Fueling Operations: The following rules shall govern the draining and fueling of aircraft:

1. No aircraft shall be fueled or drained while the engine is running, or being warmed by application of exterior heat, or while such aircraft is in an enclosed space.
2. No smoking shall be permitted within 100 feet of an aircraft being fueled or drained.
3. No person shall operate any radio transmitter or receiver, or switch electrical appliances off or on in an aircraft during fueling or draining.
4. During refueling, the aircraft and the fueling dispensing apparatus shall both be grounded to a point or points of zero electrical potential.
5. Persons engaged in the fueling and draining of aircraft shall exercise care to prevent overflow of fuel.
6. No passenger shall be permitted in any aircraft during fueling unless a cabin attendant is present or near the cabin door.
7. Only personnel engaged in the fueling, maintenance, and operation of an aircraft

shall be permitted within 100 feet of such aircraft during any such operation.

8. No person shall use any material during fueling or draining of aircraft which is likely to cause a static spark.
9. Adequate fire extinguishers shall be within ready reach of all fueling and draining operations.
10. No person shall start the engine of any aircraft when there is gasoline on the ground under such aircraft.
11. Fueling hoses and draining equipment shall be maintained in a safe, sound, and non-leaking condition.
12. All hoses, funnels, and appurtenances used in fueling and draining operations shall be equipped with a grounding device to prevent ignition of volatile liquids.
13. The fueling and draining of aircraft shall be conducted at least 50 feet from any building.

SECTION 8. Penalties.—Any person who violates any rule or regulation prescribed herein, or any order or instruction issued by the Director authorized herein, may be removed or ejected from the airport by the Director or his representative and may be deprived of the further use of the airport and its facilities for such time as may be necessary to insure the safety of the airport and the public.

SECTION 9. Amendment, etc.—The rates herein enumerated or any item thereof may be revised from time to time by the Director and these rules and regulations or any part thereof governing the use of Government air navigation facilities by duly licensed private or commercial air service operators are subject to amendment, alteration, or revision at any time by the Director effective upon approval of the Secretary of National Defense.

Provisions of contracts or grants of concessions or commissions and contracts of lease shall not conflict with any provision hereof.

SECTION 10. Effective Date.—These rules and regulations including the charges herein enumerated shall take effect upon the date of approval by the Secretary of National Defense.

JESUS A. VILLAMOR
Director of Aeronautics

Approved September 2, 1947.

RUPERTO K. KANGLEON
Secretary of National Defense

DECISIONS OF THE SUPREME COURT

[No. L-543. August 31, 1946]

JOSE O. VERA ET AL., petitioners, *vs.* JOSE A. AVELINO ET AL., respondents.

1. CONSTITUTIONAL LAW; SEPARATION OF POWERS; MANDAMUS; LEGISLATIVE BODY NOT COMPELLABLE BY, TO PERFORM LEGISLATIVE FUNCTIONS.—Mandamus will not lie against the legislative body, its members, or its officers, to compel the performance of purely legislative duties.
2. ID.; ID.; JUDICIAL DEPARTMENT WITHOUT POWER TO REVISE LEGISLATIVE ACTION.—The judicial department has no power to revise even the most arbitrary and unfair action of the legislative department, or of either house thereof, taken in pursuance of the power committed exclusively to that department by the Constitution.
3. ID.; ID.; POWER OF SUPREME COURT TO ANNUL LEGISLATIVE ENACTMENT.—In proper cases and with appropriate parties, this court may annul any legislative enactment that fails to observe the constitutional limitations.
4. ID.; ID.; JUDICIARY NOT REPOSITORY OF REMEDIES FOR ALL POLITICAL OR SOCIAL WRONGS.—The judiciary is not the repository of remedies for all political or social ills.
5. ID.; ID.; PROHIBITION; SCOPE OF.—Prohibition refers only to proceedings of any tribunal, corporation, board, or persons, exercising functions *judicial* or *ministerial*. As the respondents exercise legislative functions, the dispute falls beyond the scope of such special remedy.
6. ID.; ID.; ELECTORAL TRIBUNAL; AUTHORITY OF; FUNCTIONS OF ASSEMBLY ON ELECTION AND QUALIFICATIONS OF MEMBERS.—The Constitutional Convention circumscribed the authority of the Electoral Tribunal to "contests" relating to the election, etc., and did not intend to give it *all the* functions of the Assembly on the subject of election and qualifications of its members.
7. ID.; ID.; ID.; ID.—The House or Senate retains the authority to defer the oath-taking of any of its members, pending an election contest.
8. ID.; ID.; ID.; ID.—Independently of constitutional or statutory grant, the Senate has, under parliamentary practice, the power to inquire into the credentials of any member and the latter's right to participate in its deliberations.
9. ID.; ID.; CONGRESS; EXTENT OF LEGISLATIVE POWER.—The legislative power of the Philippine Congress is plenary, subject only to such limitations, as are found in the Republic's Constitution.
10. ID.; ID.; SENATE; POWER TO ADOPT RULES FOR ITS PROCEEDINGS.—The Senate, as a branch of the legislative department, has the constitutional power to adopt rules for its proceedings, and by legislative practice the power to promulgate such orders as may be necessary to maintain its prestige and to preserve its dignity.
11. ID.; ID.; SUPREME COURT; JUSTICES DESIGNATED TO ELECTORAL TRIBUNAL NOT DISQUALIFIED IN CASE AT BAR.—The designation of several justices to the electoral tribunals did not disqualify them in this litigation.

12. ID.; ID.; LEGISLATURE; PRESUMPTION THAT IT ACTED WITHIN CONSTITUTIONAL POWERS.—It is presumed that the legislature has acted within its constitutional powers.
13. ID.; ID.; CONSTRUCTION OF CONSTITUTION; WEIGHT OF PROCEEDINGS OF CONSTITUTIONAL CONVENTION.—The proceedings of the Constitutional Convention are less conclusive of the proper construction of the constitution than are legislative proceedings of the proper construction of a statute.
14. ID.; ID.; CONGRESS; DUTY OF PROCLAIMED CANDIDATES TO ASSUME OFFICE AND ATTEND SESSION.—Section 12 of Commonwealth Act No. 725 is addressed to the individual member of Congress, imposes on him the obligation to come to Manila, and join his colleagues in regular session, and does not imply that if, for any reason, he is disqualified, the House is powerless to postpone his admission.
15. ID.; ID.; IMMUNITY OF MEMBERS FOR SPEECH OR DEBATE; GIVING OF VOTE OR PRESENTATION OF RESOLUTION INCLUDED.—The constitutional provision that "for any speech or debate" in Congress, Senators and Congressmen "shall not be questioned in any other place," includes the giving of a vote or the presentation of a resolution.

Per **PERFECTO, J.**, dissenting:

16. CONSTITUTIONAL AND POLITICAL LAW; ELECTORAL TRIBUNAL; EXCLUSIVE POWER TO JUDGE ALL CONTESTS RELATING TO ELECTION, RETURNS, AND QUALIFICATIONS OF SENATORS AND REPRESENTATIVES.—The power to judge "all contests relating to the election, returns, and qualifications" of senators and representatives, is exclusively lodged in the respective Electoral Tribunal, the exclusivity being emphasized by the use of the word "sole" by the drafters of the Constitution.
17. ID.; CONSTITUTION; CO-AUTHORS IN BETTER POSITION TO CONSTRUE.—The co-authors of the fundamental law are in a better position to construe the very document in which they have infused the ideas which boiled in their minds, and gave a definite form to their own conviction and decisions.
18. ID.; SENATE; "QUORUM" TO DO BUSINESS.—To do business, the Senate, being composed of 24 members, needs the presence of at least 13 senators. "A smaller number may adjourn from day to day and may compel the attendance of absent members," but not in exercising any other power, such as the adoption of the Pendatun Resolution.
19. CRIMINAL LAW; FAILURE TO DISCHARGE ELECTIVE OFFICE; PENALTY.—If senators should fail to discharge the duties of their respective offices, they will incur criminal responsibility and may be punished, according to the Penal Code, with *arresto mayor* or a fine not exceeding 1,000 pesos, or both.
20. ID.; VIOLATION OF PARLIAMENTARY IMMUNITY; PENALTY.—No one may prevent senators from performing the duties of their office, such as attending the meetings of the Senate or of any of its committees or subcommittees, or from expressing their opinions or casting their votes, without being criminally guilty of a violation of parliamentary immunity, a criminal offense punished by the Penal Code with *prisión mayor*.
21. CONSTITUTIONAL AND POLITICAL LAW; SENATE; COMMISSION ON ELECTIONS; CERTIFICATE OF CANVASS AND PROCLAMATION CONCLUSIVE AS TO RIGHT OF CANDIDATES PROCLAIMED TO SEATS IN SENATE.—The petitioners' credentials consisting of the certificate of canvass and proclamation of election issued by the

Commission on Elections, are conclusive as to their right to their seats in the Senate.

22. ID.; ELECTORAL COMMISSION; POWER OF; EXTENT.—The grant of power to the Electoral Commission to judge all contests relating to the election, returns and qualifications of members of the National Assembly, is intended to be as complete and unimpaired as if it had remained originally in the legislature. The express lodging of that power in the Electoral Commission is an implied denial of the exercise of that power by the National Assembly. And this is as effective a restriction upon the legislative power as an express prohibition in the Constitution.

23. ID.; SEPARATION OF POWERS; VULGAR NOTION OF.—The vulgar notion of separation of powers appears to be simple, rudimentary, and clear-cut. As a consequence, the principle of separation of powers creates in the mind of the ignorant or uninformed the images of the different departments of government as individual units, each one existing independently, all alone by itself, completely disconnected from the remaining all others. The picture in their mental panorama offers, in effect, the appearance of each department as a complete government by itself. Each governmental department appears to be a veritable state in the general set up of the Philippine state, like the autonomous kingdoms and princedoms of the maharajahs of India.

24. ID.; ID.; CONSTITUTIONAL CONCEPTION OF.—The only acceptable conception of the principle of separation of powers within our democracy is the constitutional one. The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. The Constitution has provided for an elaborate system of checks and balances to secure co-ordination in the workings of the various departments of the government. For example, the Chief Executive under our Constitution is so far made a check on the legislative power that his assent is required in the enactment of laws. This, however, is subject to the further check that a bill may become a law notwithstanding the refusal of the President to approve it, by a vote of two-thirds or three-fourths, as the case may be, of the National Assembly. The President has also the right to convene the Assembly in special session whenever he chooses. On the other hand, the National Assembly operates as a check on the Executive in the sense that its consent through its Commission on Appointments is necessary in the appointment of certain officers; and the concurrence of a majority of all its members is essential to the conclusion of treaties. Furthermore, in its power to determine what courts other than the Supreme Court shall be established, to define their jurisdiction and to appropriate funds for their support, the National Assembly controls the judicial department to a certain extent. The Assembly also exercises the judicial power of trying impeachments. And the judiciary in turn, with the Supreme Court as the final arbiter, effectively checks the other departments in the exercise of its power to determine the law, and hence to declare executive and legislative acts void if violative of the Constitution.

25. ID.; ID.; WHOLE GOVERNMENT AS A UNIT.—The idea of unity is fundamental in the Constitution. The whole government must be viewed as a unit, and all departments and other government organs, agencies and instrumentalities as parts of that unit in the same way as the head, the hands, and the heart are parts of a human body. As a matter of fact, there is no government power vested exclusively in any authority, office, or government agency. To understand well the true meaning of the principle of separation of powers, it is necessary to remember and pay special attention to the fact that the idea of separation refers, not to departments, organs, or other government agencies, but to powers exercised. The things separated are not the subject of the powers, but the functions to be performed. It means division of functions, but not of officials or organs which will perform them. It is analogous to the economic principle of division of labor practised in a factory where multiple manufacturing processes are performed to produce a finished article.

26. ID.; ID.; SENATE ELECTORAL TRIBUNAL; POWER TO JUDGE ELECTORAL CONTESTS AND TO SUSPEND IN RELATION THERETO; CASE AT BAR.—From the facts of the case, it is evident that respondents encroached upon, invaded, and usurped the ancillary power to suspend petitioners in relation to the power to judge electoral contests concerning senators, a power which the Constitution specifically assigns to the Senate Electoral Tribunal, exclusive of all other departments, agencies, or organs of government. That power of suspension is accessory, adjective, complementary, and ancillary to the substantial power to judge said electoral contests. The accessory must follow the principal; the adjective, the substantive; the complementary, the complemented.

27. ID.; SENATE; POWER TO SUSPEND MEMBERS, LACK OF.—The Senate lacks the power of suspension, not only as ancillary remedy in senatorial election contests, but even in the exercise of the Senate judicial power to punish its members for disorderly conduct.

28. ID.; SEPARATION OF POWERS; SUPREME COURT; JURISDICTION TO DECIDE QUESTION OF VALIDITY OR NULLITY OF SENATE RESOLUTION.—The principle of separation of powers can not be invoked to deny the Supreme Court jurisdiction in this case, because to decide the question of validity or nullity of the Pendatun Resolution, of whether petitioners are illegally deprived of their constitutional rights and privileges as senators of the Philippines, of whether respondents must or must not be enjoined by injunction or prohibition from illegally and unconstitutionally trampling upon the constitutional and legal rights of petitioners, is a function judicial in nature and, not having been assigned by the Constitution to other department of government, is logically within the province of courts of justice, including the Supreme Court.

29. ID.; ID.; ID.; POWER TO DECLARE LAW UNCONSTITUTIONAL.—If the law enacted is unconstitutional, the Supreme Court has the power to declare it so and deny effect to the same.

30. ID.; ID.; ID.; ANGARA *vs.* ELECTORAL COMMISSION (63 PHIL., 139), PARALLEL WITH CASE AT BAR.—The facts and legal issues in Angara *vs.* Electoral Commission (63 Phil., 139), are in exact parallel with those in the case at bar. Since the decision in that case has been written, the question as to the Supreme Court's jurisdiction to take cognizance and decide controversies

such as the present one and to grant redress for or against parties like those included in this litigation, has been unmistakably and definitely settled in this jurisdiction.

31. CONTEMPT; SUPREME COURT; POWER TO PUNISH SENATORS FOR CONTEMPT.—Should the respondent senators disobey any order of the Supreme Court, they may be punished for contempt.

32. CONSTITUTIONAL AND POLITICAL LAW; ELECTIONS; ELECTION CONTESTS; SCOPE UNDER CONSTITUTION.—The election contests mentioned in section 11 of Article VI of the Constitution include contests "relating to qualifications" of the respective members of the Senate and of the House of Representatives.

33. ID.; CONSTITUTION; CHARACTER OF.—The Constitution of the Philippines is both a grant and a limitation of powers of Government decreed by our people, on whom sovereignty resides and from whom all government authority emanates.

34. ID.; CONGRESS; LEGISLATIVE POWER NOT VESTED IN ANY BRANCH ALONE.—The legislative power is vested in Congress, composed of the Senate and the House of Representatives, and not in any of its branches alone.

ORIGINAL ACTION in the Supreme Court. Preliminary Injunction.

The facts are stated in the opinion of the court.

Jose W. Diokno and Antonio Barredo for petitioners.
Vicente J. Francisco and Solicitor-General Tañada for respondents.

J. Antonio Araneta of the Lawyers' Guild appeared as *amicus curiae*.

BENGZON, J.:

Pursuant to a constitutional provision (section 4, Article X), the Commission on Elections submitted, last May, to the President and the Congress of the Philippines, its report on the national elections held the preceding month, and, among other things, stated that, by reason of certain specified acts of terrorism and violence in the Provinces of Pampanga, Nueva Ecija, Bulacan and Tarlac, the voting in said region did not reflect the true and free expression of the popular will.

When the Senate convened on May 25, 1946, it proceeded with the selection of its officers. Thereafter, in the course of the session, a resolution was approved referring to the report and ordering that, pending the termination of the protest lodged against their election, the herein petitioners, Jose O. Vera, Ramon Diokno and Jose E. Romero—who had been included among the sixteen candidates for senator receiving the highest number of votes, proclaimed by the Commission on Elections—shall not be sworn, nor seated, as members of that chamber.

Pertinent parts of the resolution—called Pendatun—are these:

"WHEREAS the Commission on Elections, charged under the Constitution with the duty of insuring free, orderly, and honest elec-

tions in the Philippines, reported to the President of the Philippines on May 28, 1946, that

"* * * Reports also reached this Commission to the effect that in the Provinces of Bulacan, Pampanga, Tarlac and Nueva Ecija, the secrecy of the ballot was actually violated; that armed bands saw to it that their candidates were voted for; and that the great majority of the voters, thus coerced or intimidated, suffered from a paralysis of judgment in the matter of exercising the right of suffrage; considering all those acts of terrorism, violence and intimidation in connection with elections which are more or less general in the Provinces of Pampanga, Tarlac, Bulacan and Nueva Ecija, this Commission believes that the election in the provinces aforesaid did not reflect the true and free expression of the popular will. It should be stated, however, that the Commission is without jurisdiction, to determine whether or not the votes cast in the said provinces which, according to these reports have been cast under the influence of threats or violence, are valid or invalid. * * *

"WHEREAS, the minority report of the Hon. Vicente de Vera, member of the Commission on Elections, says among other things, that 'we know that as a result of this chaotic condition, many residents of the four provinces have voluntarily banished themselves from their home towns in order not to be subjected to the prevailing oppression and to avoid being victimized or losing their lives'; and that after the election dead bodies had been found with notes attached to their necks, reading, 'Bomoto kami kay Roxas' (we voted for Roxas);

"WHEREAS the same Judge De Vera says in his minority report that in the four Provinces of Pampanga, Tarlac, Bulacan, and Nueva Ecija, the worst terrorism reigned during and after the election, and that if the elections held in the aforesaid provinces were annulled as demanded by the circumstances mentioned in the report of the Commission, Jose O. Vera, Ramon Diokno, and Jose Romero, would not and could not have been declared elected:

* * * * *

"WHEREAS, the terrorism resorted to by the lawless elements in the four provinces mentioned above in order to insure the election of the candidates of the Conservative wing of the Nationalist Party is of public knowledge and that such terrorism continues to this day; that before the elections Jose O. Vera himself declared as campaign manager of the Osmeña faction that he was sorry if presidential candidate Manuel A. Roxas could not campaign in Huk provinces because his life would be endangered; and that because of the constant murders of his candidates and leaders, presidential candidate Roxas found it necessary to appeal to American High Commissioner Paul V. McNutt for protection, which appeal American High Commissioner personally referred to President Sergio Osmeña for appropriate action, and the President in turn ordered the Secretary of the Interior to afford the necessary protection, thus impliedly admitting the existence and reign of such terrorism;

"WHEREAS, the Philippines, a Republic State, embracing the principles of democracy, must condemn all acts that seek to defeat the popular will;

"WHEREAS, it is essential, in order to maintain alive the respect for democratic institutions among our people, that no man or group of men be permitted to profit from the results of an election held under coercion, in violation of law, and contrary to the principle

of freedom of choice which should underlie all elections under the Constitution;

"WHEREAS, protests against the election of Jose O. Vera, Ramon Diokno, and Jose Romero, have been filed with the Electoral Tribunal of the Senate of the Philippines on the basis of the findings of the Commission on Elections above-quoted;

"Now, THEREFORE, be it resolved by the Senate of the Philippines in session assembled, as it hereby resolves, to defer the administration of oath and the sitting of Jose O. Vera, Ramon Diokno, and Jose Romero, pending the hearing and decision on the protests lodged against their elections, wherein the terrorism averred in the report of the Commission on Elections and in the report of the Provost Marshal constitutes the ground of said protests and will therefore be the subject of investigation and determination."

Petitioners immediately instituted this action against their colleagues responsible for the resolution. They pray for an order annulling it, and compelling respondents to permit them to occupy their seats, and to exercise their senatorial prerogatives.

In their pleadings, respondents traverse the jurisdiction of this court, and assert the validity of the Pendatun Resolution.

The issues, few and clear-cut, were thoroughly discussed at the extended oral argument and in comprehensive memoranda submitted by both sides.

A.—No JURISDICTION

Way back in 1924, Senator Jose Alejandrino assaulted a fellow-member in the Philippine Senate. That body, after investigation, adopted a resolution, suspending him from office for one year. He applied here for mandamus and injunction to nullify the suspension and to require his colleagues to reinstate him. This court believed the suspension was legally wrong, because, as senator appointed by the Governor-General, he could not be disciplined by the Philippine Senate; but it denied the prayer for relief, mainly upon the theory of the separation of the three powers, Executive, Legislative and Judicial. (*Alejandrino vs. Quezon*, 46 Phil., 83.) Said the decision:

"* * * Mandamus will not lie against the legislative body, its members, or its officers, to compel the performance of duties purely legislative in their character which therefore pertain to their legislative functions and over which they have exclusive control. The courts cannot dictate action in this respect without a gross usurpation of power. So it has been held that where a member has been expelled by the legislative body, the courts have no power, irrespective of whether the expulsion was right or wrong, to issue a mandate to compel his reinstatement. (Code of Civil Procedure, sections 222, 515; 18 R. C. L., 186, 187; Cooley, Constitutional Limitations, 190; French *vs.* Senate [1905], 146 Cal., 604; Hiss *vs.* Bartlett [1855], 69 Mass., 468; *Ex parte Echols* [1886], 39 Ala., 698; State *vs.* Bolte [1889], 151 Mo., 362; De Diego *vs.* House of Delegates [1904], 5 Porto Rico, 235; Greenwood Cemetery Land Co. *vs.* Routt [1892], 17 Colo., 156; State *ex rel.* Crammer *vs.* Thorson [1896], 33 L. R. A.,

582; *People ex rel. Billings vs. Bissell* [1857], 19 Ill., 229; *People ex rel. Bruce vs. Dunne* [1913], 258 Ill., 441; *People ex rel. La Chicote vs. Best* [1907], 187 N. Y., 1; *Abueva vs. Wood* [1924], 45 Phil., 612.)" (*Supra*, pp. 88, 89.)

"* * * Under our form of government the judicial department has no power to revise even the most arbitrary and unfair action of the legislative department, or of either house thereof, taken in pursuance of the power committed exclusively to that department by the Constitution." (*Supra*, p. 93.)

"No court has ever held and we apprehend no court will ever hold that it possesses the power to direct the Chief Executive or the Legislature or a branch thereof to take any particular action. If a court should ever be so rash as to thus trench on the domain of either of the other departments, it will be the end of popular government as we know it in democracies." (*Supra*, p. 94.)

"Conceding therefore that the power of the Senate to punish its members for disorderly behavior does not authorize it to suspend an appointive member from the exercise of his office for one year, conceding what has been so well stated by the learned counsel for the petitioner, conceding all this and more, yet the writ prayed for cannot issue, for the all-conclusive reason that the Supreme Court does not possess the power of coercion to make the Philippine Senate take any particular action. * * *" (*Supra*, p. 97.)

The same hands-off policy has been previously followed in *Severino vs. Governor-General* (16 Phil., 366) and *Abueva vs. Wood* (45 Phil., 612.)

At this point we could pretend to erudition by tracing the origin, development and various applications of the theory of separation of powers, transcribing herein whole paragraphs from adjudicated cases to swell the pages of judicial output. Yet the temptation must be resisted, and the parties spared a stiff dose of jurisprudential lore about a principle, which, after all, is the first fundamental imparted to every student of Constitutional Law.

Not that a passable excuse would be lacking for such a dissertation. The advent of the Republic, and the consequent finality of our views on constitutional issues, may call for a definition of concepts and attitudes. But surely, there will be time enough, as cases come up for adjudication.

Returning to the instant litigation, it presents no more than the questions, whether the Alejandrino doctrine still obtains, and whether the admitted facts disclose any features justifying departure therefrom.

When the Commonwealth Constitution was approved in 1935, the existence of three coördinate, co-equal and co-important branches of the government was ratified and confirmed. That Organic Act contained some innovations which established additional exceptions to the well-known separation of powers; for instance, the creation of the Electoral Tribunal wherein justices of the Supreme Court participate in the decision of congressional election protests, the grant of rule-making power to the Supreme Court, etc.; but in the main, the independence of one power from the

other was maintained. And the Convention—composed mostly of lawyers (143 out of a total of 202 members) fully acquainted with the Abueva, Alejandrino and Severino precedents—did not choose to modify their constitutional doctrine, even as it altered some fundamental tenets theretofore well established.¹

However, it is alleged that, in 1936, *Angara vs. Electoral Commission* (63 Phil., 139), modified the aforesaid ruling. We do not agree. There is no pronouncement in the latter decision, making specific reference to the Alejandrino incident regarding our power—or lack of it—to interfere with the functions of the Senate. And three years later, in 1939, the same Justice Laurel, who had penned it, cited *Alejandrino vs. Quezon* as a binding authority in the separation of powers. (*Plans vs. Gil*, 37 Off. Gaz., 1228.) It must be stressed that, in the Angara controversy, no legislative body or person was a litigant before the court, and whatever *obiter dicta*, or general expressions, may therein be found can not change the ultimate circumstance that no directive was issued against a branch of the Legislature or any member thereof.² This Court, in that case, did not require the National Assembly or any assemblyman to do any particular act. It only found it "has jurisdiction over the Electoral Commission." (*Supra*, 63 Phil., 161.)

That this Court in the Angara litigation made declarations, nullifying a resolution of the National Assembly, is not decisive. In proper cases this Court may annul any legislative enactment that fails to observe the constitutional limitations. That is a power conceded to the judiciary since Chief Justice Marshall penned *Marbury vs. Madison* in 1803. Its foundation is explained by Justice Sutherland in the Minimum Wage Case (261 U. S., 544). Said the court:

"* * * The Constitution, by its own terms, is the supreme law of the land, emanating from the people, the repository of ultimate sovereignty under our form of government. A congressional statute, on the other hand, is the act of an agency of this sovereign authority, and if it conflicts with the Constitution must fall; for that which is not supreme must yield to that which is. To hold it invalid (if it be invalid) is a plain exercise of the judicial power—that power vested in courts to enable them to administer justice according to law. From the authority to ascertain and determine the law in a given case there necessarily results, in case of conflict, the duty to declare and enforce the rule of the supreme law and reject that of an inferior act of legislation which, transcending the Constitution, is of no effect, and binding on no one. This is not the exercise of a substantive power to review and nullify acts of

¹ e. g., jeopardy in prosecutions; two-thirds vote to declare law unconstitutional, etc.

² Legislative members of the Commission were not sued as assemblymen.

Congress, for no such substantive power exists. It is simply a necessary concomitant of the power to hear and dispose of a case or controversy properly before the court, to the determination of which must be brought the test and measure of the law."

And the power is now expressly recognized by our Organic Act. (*See sections 2 and 10, Article VIII.*)

But we must emphasize, the power is to be exercised in *proper cases*, with the appropriate parties.

"It must be conceded that the acts of the Chief Executive performed within the limits of his jurisdiction are his official acts and courts will neither direct nor restrain executive action in such cases. *The rule is non-interference.* But from this legal premise, it does not necessarily follow that we are precluded from making an inquiry into the validity or constitutionality of his acts *when these are properly challenged in an appropriate legal proceeding.* * * *." "In the present case, *the President is not a party* to the proceeding. He is neither compelled nor restrained to act in a particular way. * * *" "This Court, therefore, *has jurisdiction* over the instant proceedings and will accordingly proceed to determine the merits of the present controversy." (*Planas vs. Gil.*, 37 Off. Gaz., 1231, 1232.) (Italics ours.) (*See also Lopez vs. De los Reyes* (55 Phil., 170.)

More about the Angara precedent: The defendant there was only the Electoral Commission which was "not a separate department of the Government" (Vol. 63, p. 160), and exercised powers "judicial in nature". (*Supra*, p. 184.) Hence, against our authority, there was no objection based on the independence and separation of the three co-equal *departments* of Government. Besides, this court said no more than that, *there being a conflict* of jurisdiction between two constitutional bodies, it could not decline to take cognizance of the controversy to determine the "character, scope and extent" of their respective constitutional spheres of action. Here, there is actually no antagonism between the Electoral Tribunal of the Senate and the Senate itself, for it is not suggested that the former has adopted a rule contradicting the Pendatun Resolution. Consequently, there is no occasion for our intervention. Such conflict of jurisdiction, plus the participation of the Senate Electoral Tribunal are essential ingredients to make the facts of this case fit the mold of the Angara doctrine.

Now, under the principles enunciated in the Alejandrino case, may this petition be entertained? The answer must naturally be in the negative. Granting that the postponement of the administration of the oath amounts to suspension of the petitioners from their office, and conceding *arguendo* that such suspension is beyond the power of the respondents, who in effect are and acted as the Philippine Senate (*Alejandrino vs. Quezon*, 46 Phil., 88), this petition should be denied. As was explained in the Alejandrino case, we could not order one branch of the Legislature to reinstate a member thereof. To do so would be to

establish judicial predominance, and to upset the classic pattern of checks and balances wisely woven into our institutional setup.

Adherence to established principle should generally be our guiding criterion, if we are to escape the criticism voiced once by Lord Bryce in American Commonwealth thus:

"The Supreme Court has changed its color *i. e.*, its temper and tendencies, from time to time according to the political proclivities of the men who composed it * * *. Their action flowed naturally from the habits of thought they had formed before their accession to the bench and from the sympathy they could not but feel for the doctrine on whose behalf they had contended." (The ANNALS of the American Academy of Political and Social Science, May, 1936, p. 50.)

Needless to add, any order we may issue in this case should, according to the rules, be enforceable by contempt proceedings. If the respondents should disobey our order, can we punish them for contempt? If we do, are we not thereby destroying the independence, and the equal importance to which legislative bodies are entitled under the Constitution?

Let us not be overly influenced by the plea that for every wrong there is a remedy, and that the judiciary should stand ready to afford relief. There are undoubtedly many wrongs the judicature may not correct, for instance, those involving *political questions*. Numerous decisions are quoted and summarized under this heading in 16 Corpus Juris Secundum, paragraph 145.

Let us likewise disabuse our minds from the action that the judiciary is the repository of remedies for all political or social ills. We should not forget that the Constitution has judiciously allocated the powers of government to three distinct and separate compartments; and that judicial interpretation has tended to the preservation of the independence of the three, and a zealous regard of the prerogatives of each, knowing full well that one is not the guardian of the others and that, for official wrong-doing, each may be brought to account, either by impeachment trial or by the ballot box.

The extreme case has been described wherein a legislative chamber, without any reason whatsoever, decrees by resolution the incarceration, for years, of a citizen. And the rhetorical question is confidently formulated. Will this man be denied relief by the courts?

Of course not: He may successfully apply for habeas corpus, alleging the nullity of the resolution and claiming for release. But then, *the defendant shall be* the officer or person, holding him in custody, and the question therein will be the validity or invalidity of resolution. That was done in Lopez *vs.* De los Reyes, *supra*. (See also Kilbourn

vs. Thompson, 103 U. S.). Court will interfere, because the question is not a political one, the "liberty of a citizen" being involved (*Kilbourn vs. Thompson, supra*) and the act will be clearly beyond the bounds of the legislative power, amounting to usurpation of the privileges of the courts, the usurpation being clear, palpable and oppressive and the infringement of the Constitution truly real. (See 16 C. J. S., p. 44.)

Nevertheless, suppose for the moment that we have jurisdiction:

B.—PROHIBITION DOES NOT LIE

Petitioners pray for a writ of prohibition. Under the law, prohibition refers only to proceedings of any tribunal, corporation, board, or person, exercising functions *judicial* or *ministerial*. (Rule 67, section 2, Rules of Court.) As the respondents do not exercise such kind of functions, theirs being *legislative*, it is clear the dispute falls beyond the scope of such special remedy.

C.—SENATE HAS NOT EXCEEDED POWERS

Again let us suppose the question lies within the limits of prohibition and of our jurisdiction.

Before the organization of the Commonwealth and the promulgation of the Constitution, each House of the Philippine Legislature exercised the power to defer oath-taking of any member against whom a protest had been lodged, whenever in its discretion such suspension was necessary, before the final decision of the contest. The cases of Senator Fuentebella and Representative Rafols are known instances of such suspension. The discussions in the Constitutional Convention showed that instead of transferring to the Electoral Commission *all the powers* of the House or Senate as "the sole judge of the election, returns, and qualifications of the members of the National Assembly," it was given only jurisdiction over "all contests" relating to the election, etc. (Aruego, *The Framing of the Philippine Constitution*, Vol. I, p. 271.) The proceedings in the Constitutional Convention on this subject are illuminating:

"It became gradually apparent in the course of the debates that the Convention was evenly divided on the proposition of creating the Electoral Commission with the membership and powers set forth in the draft. It was growing evident, too, that the opposition to the Electoral Commission was due to the rather inclusive power of that body to be the judge not only of cases contesting the election of the members of the National Assembly, but also of their elections, returns, and qualifications.

"Many of the delegates wanted to be definitely informed of the scope of the powers of the Electoral Commission as defined in the first draft before determining their final decision; for if the draft meant to confer upon the Electoral Commission the inclusive power to pass upon the elections, returns, and qualifications—contested or

not—of the members of the National Assembly, they were more inclined to vote against the Electoral Commission. In an attempt to seek this clarification, the following interpellations took place:

* * * * *

"*Delegate Labrador.*—Does not the gentleman from Capiz believe that unless this power is granted to the assembly, the assembly on its own motion does not have the right to contest the election and qualification of its members?

"*Delegate Roxas.*—I have no doubt that the gentleman is right. If this draft is retained, as it is, even if two-thirds of the assembly believe that a member has not the qualifications provided by law, they cannot remove him from that reason."

* * * * *

"In the course of the heated debates, with the growing restlessness on the part of the Convention, President Recto suspended the session in order to find out if it was possible to arrive at a compromise plan to meet the objection.

"When the session was resumed, a compromise plan was submitted in the form of an amendment presented by Delegates Francisco, Ventura, Lim, Vinzons, Rafols, Mumar, and others, limiting the power of the Electoral Commission to the judging of *all cases contesting* the elections, returns, and qualifications of the members of the National Assembly. Explaining the difference between the amendment thus proposed and the provision of the draft, Delegate Roxas, upon the request of President Recto, said:

"The difference, Mr. President, consists only in obviating the objection pointed out by various delegates to the effect that the first clause of the draft which states 'the election, returns, and qualifications of the members of the National Assembly' seems to give to the Electoral Commission the power to determine also the election of the members who have not been protested. And in order to obviate that difficulty, we believe that the amendment is right in that sense * * * that is, if we amend the draft so that it should read as follows: 'All cases contesting the election, etc.', so that the judges of the Electoral Commission will limit themselves only to cases in which there has been a protest against the returns.'

"The limitation to the powers of the Electoral Commission proposed in the compromise amendment did much to win in favor of the Electoral Commission many of its opponents; so that when the amendment presented by Delegate Labrador and others to retain in the Constitution the power of the lawmaking body to be the sole judge of the elections, returns, and qualifications of its members was put to a nominal vote, it was defeated by 98 negative votes against 56 affirmatives votes.

"With the defeat of the Labrador amendment, the provision of the draft creating the Electoral Commission, as modified by the compromise amendment, was consequently approved.

"All cases contesting the elections, returns and qualifications of the members of the National Assembly shall be judged by an electoral commission, composed of three members elected by the party having the largest number of votes in the National Assembly, three elected by the members of the party having the second largest number of votes, and three justices of the Supreme Court designated by the Chief Justice, the Commission to be presided over by one of said justices."

"In the special committee on style, the provision was amended so that the chairman of the Commission should be the senior Justice in the Commission, and so that the Commission was *to be the sole judge of the election, returns, and qualifications of the members of the National Assembly.* As it was then amended, the provision read:

"There shall be an Electoral Commission composed of three Justices of the Supreme Court designated by the Chief Justice, and of six Members chosen by the National Assembly, three of whom shall be nominated by the party having the largest number of votes, and three by the party having the second largest number of votes therein. The senior Justice in the Commission shall be its Chairman. *The Electoral Commission shall be the sole judge of the election, returns, and qualifications of the Members of the National Assembly.*'

"* * * The report of the special committee on style on the power of the Commission was opposed on the floor of the Convention by Delegate Confesor, who insisted that the Electoral Commission should limit itself to judging only of all *contests* relating to the elections, returns, and qualifications of the members of the National Assembly. The draft was amended accordingly by the Convention.

"As it was finally adopted by the Convention the provision read:

"There shall be an Electoral Commission * * * The Electoral Commission shall be the sole judge of *all contests* relating to the election, returns, and qualifications of the Members of the National Assembly." (Aruego, the Framing of the Philippine Constitution, Vol. I, pp. 267, 269, 270, 271 and 272.)

Delegate Roxas rightly opined that "if this draft is retained" the Assembly would have no power over election and qualifications of its members; because all the power is by the draft vested in the Commission.

The Convention, however, bent on circumscribing the latter's authority to "contests" relating to the election, etc. altered the draft. The Convention did not intend to give it *all the functions* of the Assembly on the subject of election and qualifications of its members. The distinction is not without a difference. "As used in constitutional provisions", election contest "relates only to statutory contests in which the contestant seeks not only to oust the intruder, but also to have himself inducted into the office." (Laurel on Elections, Second Edition, p. 250; 20 C. J., 58.)

One concrete example will serve to illustrate the remaining power in either House of Congress: A man is elected by a congressional district who had previously served ten years in Bilibid Prison for *estafo*. As he had no opponent, no protest is filed. And the Electoral Tribunal has no jurisdiction, because there is no election contest. (20 C. J., 58, *supra*.) When informed of the fact, may not the House, *motu proprio* postpone his induction? May not the House

¹ Not qualified as elector—not qualified as congressman (Constitution, Article VI, section 7, in relation with section 94(a) Election Code.)

suspend, investigate and thereafter exclude him?¹ It must be observed that when a member of the House raises a question as to the qualifications of another, an "election contest" does not thereby ensue, because the former does not seek to be substituted for the latter.

So that, if *not all* the powers regarding the election, returns, and qualifications of members was withdrawn by the Constitution from the Congress; and if, as admitted by petitioners themselves at the oral argument, the power to defer the oath-taking, until the contest is adjudged, does not belong to the corresponding Electoral Tribunal, then it must be held that the House or Senate still retains such authority, for it has not been transferred to, nor assumed by, the Electoral Tribunal. And this result flows, whether we believe that such power (to delay induction) stemmed from the (former) privilege of either House to be the judge of the election, returns, and qualifications of the members thereof, or whether we hold it to be inherent to every legislative body as a measure of self-preservation.

It is customary that when a number of persons come together to form a legislative body, "* * * the first organization must be temporary, and if the law does not designate the person who shall preside over such temporary organization, the persons assembled and claiming to be members may select one of their number for that purpose. The next step is to ascertain in some convenient way the names of the person who are, by reason of holding the proper credentials, *prima facie* entitled to seats, and therefore entitled to take part in the permanent organization of the body. In the absence of any statutory or other regulation upon this subject, a committee on credentials is usually appointed, to whom all credentials are referred, and who report to the body a roll of the names of those who are shown by such credentials to be entitled to seats. * * *" (Laurel on Elections, Second Edition, pp. 356, 357, quoting McCrary on Elections.)

Therefore, independently of constitutional or statutory grant, the Senate has, under parliamentary practice, the power to inquire into the credentials of any member and the latter's right to participate in its deliberations. As we have seen, the assignment by the Constitution to the Electoral Tribunal does not actually negative that power—provided the Senate does not cross the boundary line, deciding an election contest against that member. Which the respondents at the bar never attempted to do. Precisely, their resolution recognized, and did not impair, the jurisdiction of the Electoral Tribunal to decide the contest. To test whether the resolution trespassed on the territory of the last named agency, let us ask the question: May the Electoral Tribunal of the Senate order that Body to defer the admis-

sion of any member whose election has been contested? Obviously not. Then it must be conceded that the passage of the disputed resolution meant no invasion of the former's realm.

At this juncture the error will be shown of the contention that the Senate has not this privilege "as a residuary power." Such contention is premised on the proposition that the Houses of the Philippine Congress possess *only such powers* as are expressly or impliedly granted by the Constitution. And an American decision is quoted on the powers of the United States Congress. The mistake is due to the failure to differentiate between the nature of legislative power under the Constitution of the United States, and legislative power under the State Constitutions and the Constitution of the Commonwealth (now the Republic). It must be observed that the Constitution of the United States contains only a *grant or delegation of legislative powers* to the Federal Government, whereas, the other Constitutions, like the Constitution of the Commonwealth (now the Republic), *are limits* upon the plenary powers of legislation of the Government. The legislative power of the United States Congress is confined to the subjects on which it is permitted to act by the Federal Constitution. (*Door vs. United States*, 195 U. S., 140; *Martin vs. Hunter*, 1 Wheat., 326; *McCulloch vs. Maryland*, 4 Wheat., 405; *United States vs. Cruikshank*, 92 U. S., 551.) The legislative power of the Philippine Congress is plenary, subject only to such limitations, as are found in the Republic's Constitution. So that any power, deemed to be legislative by usage and tradition, is necessarily possessed by the Philippine Congress, unless the Organic Act has lodged it elsewhere.

Another line of approach. The Senate, as a branch of the legislative department, had the constitutional power to adopt rules for its proceedings (section 10 (3), Article VI of the Constitution), and by legislative practice it is conceded the power to promulgate such orders as may be necessary to maintain its prestige and to preserve its dignity.¹ We are advised by the respondents that, after weighing the propriety or impropriety of the step, the Senate, in the exercise of its authority and discretion and of its inherent power of self-preservation, resolved to defer the administration of oath and the sitting of the petitioners pending determination of the contest. It is not clear that the measure had no reasonable connection with the ends in view, and neither does it palpably transcend the powers of a public deliberative body. On the contrary, there are reasons to believe it was prompted by the dictates of ordinary caution, or of public policy. For, if, as reported by the correspond-

¹ See *Lopez vs. De los Reyes*, *supra*.

ing constitutional agency, concededly well-posted on the matter by reason of its official duties, the elections held in the Provinces of Pampanga, Bulacan, Tarlac, and Nueva Ecija were so tainted with acts of violence and intimidation, that the result was not the legitimate expression of the voters' choice, the Senate made no grievous mistake in foreseeing the probability that, upon proof of such widespread lawlessness, the Electoral Tribunal would annul the returns in that region (*See Gardiner vs. Romulo*, 26 Phil., 521; Laurel, *Elections* (2nd ed.), p. 448 *et seq.*), and declare herein petitioners not entitled to seats in the Senate. Consequently, to avoid the undesirable results flowing from the participation of disqualified members in its deliberations, it was prudent for it to defer the sitting of the respondents. True, they may have no direct connection with the acts of intimidation; yet the votes may be annulled just the same, and if that happens, petitioners would not be among the sixteen senators elected. Nor was it far-fetched for the Senate to consider that "in order to maintain alive the respect for democratic institutions among our people, no man or group of men (should) be permitted to profit from the results of an election held under coercion, in violation of law and contrary to the principle of freedom of choice which should underlie all elections under the Constitution." (Exhibit "A" of petitioners' complaint.)

a. Justices in the Electoral Tribunals.

During our deliberations, it was remarked that several Justices subscribing the majority opinion, belong to the electoral tribunals wherein protests connected with the Central Luzon polls await investigation. Mulling over this, we experience no qualmish feelings about the coincidence. Their designation to the electoral tribunals deducted not a whit from their functions as members of this Supreme Court, and did not disqualify them in this litigation. Nor will their deliverances hereat on a given question operate to prevent them from voting in the electoral forum on identical questions; because the Constitution, establishing no incompatibility between the two roles, naturally did not contemplate, nor want, justices opining one way here, and thereafter holding otherwise, *pari materia*, in the electoral tribunals, or vice-versa.

Anyhow, there should be no diversity of thought in a democratic country, at least, on the legal effects of the alleged rampant lawlessness, root and basis of the Pendatun Resolution.

However, it must be observed and emphasized, herein is no definite pronouncement that terrorism and violence *actually prevailed* in the district to such extent that the result was not the expression of the free will of the electorate.

Such issue was not tendered in these proceedings. It hinges upon proof to be produced by protestants and protestees at the hearing of the respective contests.

b. Doubt and presumption.

After all is said or written, the most that may be conceded to the industry of petitioners' counsel is that the Senate's power, or lack of power, to approve the resolution is not entirely clear. We should, therefore, indulge the presumption that official duty has been performed regularly, (Rule 123, section 69, Rules of Court), and in the right manner:

"It is a general principle to presume that public officers act correctly until the contrary is shown. *United States vs. Weed* (5 Wall. 62).

"It will be presumed, unless the contrary be shown, that a public officer acted in accordance with the law and his instructions. *Morally Gonzales vs. Ross* (*Gonzales vs. Ross*), 120 U. S., 605; 7 Sup. Ct. Rep., 705.

"Officers charged with the performance of a public duty are presumed to perform it correctly. *Quinlan vs. Greene County*, 205 U. S., 410; 27 Sup. Ct. Rep., 505. (United States Supreme Court Reports Digest, Vol. 5, p. 3188.)

"It is presumed that the legislature has acted within its constitutional powers." (See cases cited at p. 257; 16 C. J. S., note 1.)

And should there be further doubt, by all the maxims of prudence, left alone comity, we should heed the off-limits sign at the Congressional Hall, and check the impulse to rush in to set matters aright—firm in the belief that if a political fraud has been accomplished, as petitioners aver, the sovereign people, ultimately the offended party, will render the fitting verdict—at the polling precincts.

c. Membership in the Constitutional Convention.

The theory has been proposed—modesty aside—that the dissenting members of this Court who were delegates to the Constitutional Convention and were "co-authors of the Constitution" "are in a better position to interpret" that same Constitution in this particular litigation.

There is no doubt that their properly recorded utterances during the debates and proceedings of the Convention deserve weight, like those of any other delegate therein. Note, however, that the proceedings of the Convention "are less conclusive of the proper construction of the instrument than are legislative proceedings of the proper construction of a statute; since in the latter case it is the intent of the legislature we seek, while in the former we are endeavoring to arrive at the *intent of the people* through the discussions and deliberations of their representatives." (Willoughby on the Constitution, Vol. I, pp. 54, 55.)

Their writings (of the delegates) commenting or explaining that instrument, published shortly thereafter, may, like those of Hamilton, Madison and Jay in The Federalist—here in the Philippines, the book of Delegate Aruego, *supra*, and of others—have persuasive force. (Op. cit., p. 55.)

But their personal opinion on the matter at issue expressed during our deliberations stand on a different footing: If based on a "fact" known to them, but not duly established or judicially cognizable, it is immaterial, and their brethren are not expected to take their word for it, to the prejudice of the party adversely affected, who had no chance of rebuttal. If on a matter of legal hermeneutics, their conclusions may not, simply on account of membership in the Convention, be a shade better, in the eyes of the law. There is the word "deference" to be sure. But deference is a compliment spontaneously to be paid—never a tribute to be demanded.

And if we should (without intending any disparagement) compare the Constitution's enactment to a drama on the stage or in actual life, we would realize that intelligent spectators or readers often know as much, if not more, about the real meaning, effects or tendencies of the event, or incidents thereof, as some of the actors themselves, who sometimes become so absorbed in fulfilling their emotional roles that they fail to watch the other scenes or to meditate on the larger aspects of the whole performance, or what is worse, become so infatuated with their lines as to construe the entire story according to their prejudices or frustrations. Perspective and disinterestedness help certainly a lot in examining actions and occurrences.

Come to think of it, under the theory thus proposed, Marshall and Holmes (names venerated by those who have devoted a sizable portion of their professional lives to analyzing or solving constitutional problems and developments) were not so authoritative after all in expounding the United States Constitution—because they were not members of the Federal Convention that framed it!

D.—ALLEGED DUTY OF RESPONDENTS

Quoting section 12 of Commonwealth Act No. 725, counsel for petitioners assert that it was respondents' duty, legally inescapable, to permit petitioners to assume office take part in the current regular session. The section reads partly:

"The candidates for Member of the House of Representatives and those for Senator who have been proclaimed elected by the respective Board of Canvassers and the Commission on Elections shall assume office and shall hold regular session for the year nineteen hundred and forty-six on May twenty-five, nineteen hundred and forty-six.
* * *"
(Section 12, Commonwealth Act No. 725.)

We have carefully considered the argument. We opine that, as contended by the Solicitor General, this provision is addressed to the individual member of Congress, imposing on him the obligation to come to Manila, and join his colleagues in regular session. However, it does not imply that if, for any reason, he is disqualified, the House is powerless to postpone his admission. Suppose that after the elections a member is finally convicted of treason. May not the House refuse him outright admission, pending an investigation (by it or the Electoral Tribunal as the case may be) as to his privilege to sit there? Granting the right to admission as the counterpart of the duty to assume office by virtue of said section 12; we must nevertheless allow that such right would not be peremptory whenever it contacts other rights of equal or superior force. To illustrate: if the law provided that all children, seven years or more, "shall go to school", it can not reasonably be inferred that school authorities *are bound to accept every seven-year boy, even if he refuses to pay fees, or to present the certificates required by school regulations.*

Furthermore, it would not be erroneous to maintain that any right spelled out of section 12 must logically be limited to those candidates whose proclamation is clear, unconditional and unclouded, and that such standard is not met by petitioners, because in the very document attesting to their election one member of the Commission on Elections demurred to the non-exclusion of the votes in Central Luzon, calling attention to the reported reign of terror and violence in that region, and virtually objecting to the certification of herein petitioners. To be sure, it was this beclouded condition of petitioners' credential (certificate of canvass) that partly prompted the Senate to enact the precautionary measure herein complained of. And finding no phrase or sentence in the Constitution expressly or impliedly outlawing the step taken by that legislative body, we should be, and we are, reluctant to intervene.

Indeed, had the Senate been officially informed that the inclusion of petitioners' name in the Commission's certificate had been made at the point of a gangster's automatic, none will deny the appositeness of the postponement of their induction, pending an inquiry by the corresponding authorities. Yet the difference between such situation and the instant litigation is one of degree, broad and wide perhaps, but not altering the dominant legal principle.

In answer to the suggestions as to abuse of the power, it should be stated that the mere possibility of abuse is no conclusive argument against the existence of the power, for the simple reason that every official authority is susceptible of misuse. And everybody knows that when any

power is wrongfully used, the Government and the people will discover the methods to curb it.

Perhaps it is necessary to explain that this decision goes no further than to recognize the existence of Congressional power. It is settled that the point whether such power has been wisely or correctly exercised, is usually beyond the ken of judicial determination.

E.—PARLIAMENTARY PRIVILEGES

One final consideration.

The Constitution provides (Article VI, section 15) that "for any speech or debate" in Congress, Senators and Congressmen "shall not be questioned in any other place." The Supreme Court of the United States has interpreted this privilege to include *the giving of a vote or the presentation of a resolution.*

"* * * It would be a narrow view of the constitutional provision to limit it to words spoken in debate. The reason of the rule is as forcible in its application to written reports presented in that body by its committees, to resolutions offered, which, though in writing, must be reproduced in speech, and to the act of voting, * * *" (Kilbourn *vs.* Thompson, 103 U. S., 204; 26 Law. ed., 377, p. 391.)

In the above case, Kilbourn, for refusing to answer questions put to him by the House of Representatives of the United States Congress, concerning the business of a real estate partnership, was imprisoned for contempt by resolution of the House. He sued to recover damages from the sergeant-at-arms and the congressional members of the committee, who had caused him to be brought before the House, where he was adjudged to be in contempt. The Supreme Court of the United States found that the resolution of the House was void for want of jurisdiction in that body, but the action *was dismissed as to the members of the committee* upon the strength of the herein above-mentioned congressional immunity. The court cited with approval the following excerpts from an earlier decision of the Supreme Court of Massachusetts:

"These privileges are thus secured, not with the intention of protecting the members against prosecutions for their own benefit, but to support the rights of the people, by enabling their representatives to execute the functions of their office *without fear of prosecutions, civil or criminal.* I, therefore, think that the article ought not to be construed strictly, but liberally, that the full design of it may be answered. * * *" (103 U. S., 203.) (Italics ours.)

Commenting on this Congressional privilege, Willoughby relates, apparently as controlling, the following incident:

"In 1910, several Members of Congress having been served with a writ of mandamus in a civil action brought against them as members of the Joint Committee on Printing and growing out a refusal of a bid of the Valley Paper Company, for the furnishing of paper, the Senate resolved that the Justice issuing the writ had 'unlawfully'

invaded the constitutional privileges and prerogatives of the Senate of the United States and of three Senators; and was without jurisdiction to grant the rule, and Senators are directed to make no appearance in response thereto". (Willoughby on the Constitution of the United States, Vol. I, Second Edition, p. 616.)

Respondents are, by this proceeding, called to account for their votes in approving the Pendatun Resolution. Having sworn to uphold the Constitution, we must enforce the constitutional directive. We must not question, nor permit respondents to be questioned here in connection with their votes. (*Kilbourn vs. Thompson, supra.*)

Case dismissed. No costs.

Moran, C. J., Parás, Pablo, and Padilla, JJ., concur.

HILADO, J., concurring:

I concur.

Petitioners, alleging that they have been elected Senators in the last national elections, have filed this proceeding against respondents who, according to the complaint, have been likewise elected Senators in the same elections. In paragraph III of the complaint it is alleged that respondent Hon. Jose A. Avelino is joined in this proceeding as member and President of the Senate. Two kinds of remedies are sought by petitioners, one ancillary and the other principal. The ancillary they would have consists in a preliminary injunction addressed to "respondents, their officials, employees, agents and other persons acting under them, ordering them", until the order is remanded by the court, "to desist and to abstain from carrying out" the so-called Pendatun Resolution complained of. (Exhibit "A" attached to complaint). The principal remedy, if the suit is to prosper, would be as follows: a judicial declaration that the said resolution is entirely null and void, a definite order of this court prohibiting respondents, and each of them, from preventing petitioners from "continuing in their seats in the Senate of the Philippines and freely exercising their office as Senators, and likewise prohibiting them from adopting any other ulterior procedure to execute the said resolution."

1. Has this court power to issue the writ of preliminary injunction sought by petitioners under the facts alleged in their complaint?

The power of this court to issue auxillary writs and process is defined in, and conferred by, section 19 of Act No. 136, as follows:

"SEC. 19. Power to issue all necessary auxiliary writs.—The Supreme Court shall have power to issue writs of certiorari and all other auxiliary writs and process necessary to the complete exercise of its original or appellate jurisdiction."

Under this provision, such auxiliary writ or process as the writ of preliminary injunction prayed for by petitioners in the instant case, is only issuable by this court, firstly, where this court is engaged in the exercise of its original (or appellate) jurisdiction in a *main* case, and secondly, when such writ or process is necessary to a complete exercise of that jurisdiction. This principle is ingrained in and underlies the pertinent provisions of the present Rules of Court (Rule 60). Indeed, it is elementary that an independent action cannot be maintained merely to procure a preliminary injunction as its sole objective. (*Panay Municipal Cadastre vs. Garduño*, 55 Phil., 574.)

Besides, there are other grounds for holding that this court lacks jurisdiction to issue the writ of preliminary injunction prayed for by petitioners. It is clear that the rights sought to be exercised or protected by petitioners through this proceeding are political rights and the questions raised are political questions, and it is well settled that the equitable remedy of injunction is not available for such a purpose. The principle has also been incorporated in the rule that a court of chancery will not entertain a suit calling for a judgment upon a political question, and of course this court has been resorted to in the instant case as a court of equity in so far as injunctive relief is being sought. In the case of *Fletcher vs. Tuttle* (151 Ill., 41; 25 L. R. A., 143, 146), the definitions of a political right by Anderson and Bouvier are quoted. Anderson defines a political right as a "right exercisable in the administration of government" (*Anderson Law Dictionary*, 905). And Bouvier says: "Political rights consist in the power to participate, directly or indirectly, in the establishment or management of the government." (*2 Bouvier Law Dictionary*, 579).

* * * * * * * * *
"The prayer of the bill is that, upon the hearing of the cause, both acts be declared unconstitutional and void, and held to be of no effect; and that a writ of injunction issue to Walter C. Tuttle, county clerk of Vermilion county, restraining him from issuing, or causing to be posted, notices of election calling an election for the house of representatives for the eighteenth senatorial district; and that such injunction be made perpetual; and that the court grant to the petitioner and to the people all such other and further relief as the case demands.

* * * * * * * * *
"From the foregoing statement of these two bills, it seems to be perfectly plain that the entire scope and object of both is the assertion and protection of *political*, as contradistinguished from civil, personal or property rights. In both the complainant is a legal voter, and a candidate for a particular elective office; and by his bill he is seeking the protection and enforcement of his right to cast his own ballot in a legal and effective manner, and also his right to be such candidate, to have the election called and held under the provisions of a valid law, and to have his name printed upon the ballots to be

used at such election, so that he may be voted for in a legal manner. The rights thus asserted are purely political; nor, so far as this question is concerned, is the matter aided in the least by the attempt made by the complainant in each bill to litigate on behalf of other voters or of the people of the state generally. The claims thus attempted to be set up are all of the same nature, and are none the less political.

"As defined by Anderson, a civil right is 'a right accorded to every member of a district, community, or nation,' while a political right is a 'right exercisable in the administration of government.' Anderson Law Dictionary, 995. Says Bouvier: 'Political rights consist in the power to participate, directly or indirectly, in the establishment or management of the government. These political rights are fixed by the constitution. Every citizen has the right of voting for public officers, and of being elected. These are the political rights which the humblest citizen possesses. Civil rights are those which have no relation to the establishment, support, or management of the government. They consist in the power of acquiring and enjoying property, or exercising the paternal or marital powers, and the like. It will be observed that every one, unless deprived of them by sentence of civil death, is in the enjoyment of the civil rights, which is not the case with political rights; for an alien, for example, has no political, although in full enjoyment of the civil rights.' (2 Bouvier Law Dic., 579).

"* * * * A preliminary injunction having been awarded, it was disregarded by the city officers, who proceeded, notwithstanding, to canvass the vote and declare the result. Various of the city officers and their advisers were attached and fined for contempt, and, on appeal to this court from the judgment for contempt, it was held that the matter presented by the bill was a matter over which a court of chancery has no jurisdiction, and that *the injunction was void*, so that its violation was not an act which subjected the violators to proceedings for contempt.

"* * * * In *Georgia vs. Stanton* (73 U. S.; 6 Wall., 50; 18 Law. ed., 721), a bill was filed by the state of Georgia against the Secretary of War and other officers representing the executive authority of the United States, to restrain them in the execution of the acts of congress known as the 'Reconstruction Acts,' on the ground that the enforcement of these acts would annul and totally abolish the existing state government of the state, and establish another and different one in its place, and would, in effect, overthrow and destroy the corporate existence of the state, by depriving it of all means and instrumentalities whereby its existence might and otherwise would be maintained; and it was held that the bill called for a judgment upon a *political* question, and that it would not therefore be entertained by a court of chancery; and it was further held that the character of the bill was not changed by the fact that, in setting forth the political rights sought to be protected, it averred that the state had real and personal property, such, for example, as public buildings, etc., of the enjoyment of which by the destruction of its corporate existence, the state would be deprived, such averment not being the substantial ground of the relief sought. (*Fletcher vs. Tuttle*, 151 Ill., 41; 25 L. R. A., 143, 145, 146, 147; Italics supplied.)

"Section 381. 3. *Political questions.*—a. *In general.*—It is a well-settled doctrine that political questions are not within the province of the judiciary, except to the extent that power to deal with such question has been conferred on the courts by express constitutional or statutory provisions. It is not so easy, however, to define the phrase 'political question,' nor to determine what matters fall within its

scope. It is frequently used to designate all questions that lie outside the scope of the judicial power. More properly, however, it means those questions which, under the constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government. Among the questions that have been held to be political, and therefore beyond the province of the judiciary to decide, are: Questions relating to the existence or *legality of the government under which the court is acting*; What persons or organizations constitute the lawful government of a state of the Union, or of a foreign country; * * *; the canvass of an election. (12 C. J., 878, 879; Italics supplied.)

"Section 20. 4. *Only civil rights protected.*—The subject matter of equitable jurisdiction being civil property and the maintenance of civil rights, injunction will issue only in cases where complainant's civil rights have been invaded. Injunctions do not issue to prevent acts merely because they are immoral, illegal or criminal. Courts of equity have no jurisdiction over matters or questions of a *political nature* unless civil property rights are involved and will not interfere to enforce or protect purely *political rights*. * * * ." (32 C. J., 41; Italics supplied.)

But petitioners seem to proceed upon the theory that there is a main case here to which the preliminary injunction would be merely auxiliary—one of prohibition, presumably under Rule 67, sections 2, 4, and 7. Rule 67, section 2, omitting impertinent parts, says:

"SEC. 2. *Petition for prohibition.*—When the proceedings of any tribunal, corporation, board, or person, whether exercising functions judicial or ministerial * * *."

To begin with, respondents herein cannot in any rational sense be said to constitute a "tribunal, corporation, board or person * * * exercising functions judicial or ministerial." To be sure, the functions of the Senate and of its members in the premises are not judicial. It is no less certain, in my opinion, that they are not ministerial. Indeed, they are not only legislative but discretionary in the highest sense, as more at length demonstrated hereafter.

It is insisted, however, that the provisions of section 12 of Commonwealth Act No. 725 imposed upon respondents the ministerial duty of letting petitioners assume office and participate in the regular session for the year 1946 on May 25, 1946. But, as in my opinion correctly contended by the Solicitor General at the argument, this provision is addressed to the members of both Houses of Congress who are to assume office and hold the regular session. Altho to this, some who opine differently from us, may counter with the question: What is the use of imposing upon said members the ministerial duty to assume office and hold the session if either House or the other members thereof could prevent them from so doing? In the first place, I would not say that, considering together, as we should, the report

of the Commission on Elections to the President of the Senate of May 23, 1946 (Exhibit B), and the certificate of canvass of the same date (Exhibit C), said Commission "proclaimed elected" those candidates whose election may be adversely affected by the Commission's own express reservation as to the validity or invalidity of the votes cast in the Provinces of Pampanga, Bulacan, Tarlac, and Nueva Ecija, in the same sense that they proclaimed elected those not so affected—it would seem that the proclamation made in (Exhibit C) was based merely upon a numerical canvass or count of the votes cast, the Commission considering itself without authority to discount the votes cast in said four provinces, leaving that question to the Electoral Tribunal for the Senate; and it would seem further, that within the meaning and intent of section 12 of Commonwealth Act No. 725 the phrase "candidates * * * proclaimed elected," rationally construed, is exclusive of those of whose valid election the Commission is the first, in effect, to express very grave doubts. As to these, considering the Commission's report and certificate of canvass together, the Commission, in final effect, far from proclaiming them elected, confesses that it does not really know whether they have been or not. In the second place, I do not admit that any such ministerial duty is imposed upon the members of Congress in the sense that its fulfillment may be compelled by mandamus issuing from the judiciary. In the third place, if we were to concede that the intention of the law is as petitioners contend it to be, that is, that it imposes upon both Houses of Congress and upon the members thereof who legitimately act for them, the ministerial duty of letting even those members, as to whom there exist grounds for suspension, assume office and participate in the Houses' deliberations, I am of the considered opinion that the provision would be null and void for the simple reason that it would be destructive of, and repugnant to, the inherent power of both Houses to suspend members for reasons of self-preservation or decorum. I say null and void, because the principle underlying said inherent power is ingrained in the very genius of a republican and democratic government, such as ours, which has been patterned after that of the United States, and therefore lies at the very foundation of our constitutional system. It was admitted at the argument that when both legislative chambers were the sole judges of the election, returns and qualifications of their members, each chamber possessed such inherent power of suspension, particularly as against members whose election was the subject of contest. When the Commonwealth Constitution transferred to the Electoral Tribunal for each chamber the jurisdiction as sole judge of all contests relating to the elections, returns, and qualifications

of its members, without any provision as to said power of suspension, the clear inference is that the same was left intact, *to remain where it was inherent*. And certainly the framers should not be presumed to have *silently* intended to abrogate and take away a power so vital and so essential.

Coming now more fundamentally to the alleged main case presented by the complaint. As stated at the outset, the principal remedy pursued by petitioners, if this suit is to prosper, and therefore the main case which they seem to allege as justifying the ancillary remedy of preliminary injunction, would be concerned with a judicial declaration by this court that the so-called Pendatun Resolution is entirely null and void, with a definite order of this court prohibiting respondents, and each of them, from preventing petitioners "from continuing in their seats in the Senate of the Philippines and freely exercising their functions as Senators, and likewise prohibiting them from adopting any other ulterior procedure to execute the said resolution."

This immediately brings to the fore the vital and serious question of whether this court has jurisdiction to grant the remedy thus prayed for by giving final judgment making the said judicial declaration of nullity and granting the writ of prohibition definitely prohibiting the respondent President of the Senate and respondent Senators from executing the above specified acts. Such fundamental principle as the separation of powers, as well as the exclusive jurisdiction of the Electoral Tribunal for the Senate of all contests relating to the elections, returns and qualifications of its members, are involved.

Our Constitution and laws will be scanned and searched in vain for the slightest hint of an intention to confer upon the courts, including the Supreme Court, the power to issue coercive process addressed to, or calculated to control the action of, either of the other two coordinate departments of the Government—the Legislative whose power is vested in the Congress, consisting of the Senate and the House of Representatives (Constitution, Article VI, section 1), and the executive whose power is vested in the President (Constitution, Article VII, section 1), concerning matters within the sphere of their respective functions. Besides, if we had jurisdiction to issue the writ of preliminary injunction, it must be upon the ground that *prima facie* the facts alleged in the complaint are sufficient to justify the writ. In that case, we must have the power to make said injunction final if upon a trial on the merits we find those facts proven. (Rule 60, section 10). But since such a permanent or perpetual writ would have to be premised upon the determination that petitioners have been legally and validly elected, which question is beyond our power to decide,

it is clear that we lack jurisdiction to issue even the preliminary process. And be it not contended that our preliminary writ is simply to serve while the contest has not been decided by the Electoral Tribunal, because under Act No. 136, section 19, and Rule 60, sections 2 and 3, this court can issue such a process in aid only of its own jurisdiction over a main case, and not in aid of the jurisdiction of another tribunal—and it is unthinkable that the Supreme Court should be made to serve as a sort of auxiliary court to the Electoral Tribunal.

2. Has this court jurisdiction of the subject matter of the alleged main case and, consequently, to grant the alleged principal remedy?

The judicial declaration of nullity sought by petitioners, severed from the writ of prohibition prayed for by them, would become, if at all, nothing more nor less than a declaratory relief. Thus divorced from the remedy of prohibition, it will be a mere abstract pronouncement of an opinion of this court regarding the constitutionality or unconstitutionality of the Pendatun Resolution, giving rise to no substantial relief or positive remedy of any kind. It will order nothing and will prohibit nothing to be done by one party or the other. But not even as such declaratory relief can said judicial declaration be considered under Rule 66, nor its antecedents, Act No. 3736 and Commonwealth Act No. 55, since the Pendatun Resolution is neither a "deed, will, contract or other written instrument * * * or a statute or ordinance," within the plain and natural meaning of said rule and said acts, aside from the reason that pursuant to the same acts the action for a declaratory judgment should be brought in a Court of First Instance, without any express provision conferring *original* jurisdiction upon this court in such cases, which provision is necessary before this court can possess such original jurisdiction (Act No. 136, section 17), and the final consideration that alike under said Act No. 3736 and Rule 66, section 6, the court has a discretion to refuse to exercise the power to construe instruments, among other cases, where the construction is not necessary *and proper* at the time *under all the circumstances*. In the case of *Alejandrino vs. Quezon* (46 Phil., 83, 95), this court, referring to a case of mandamus, said:

"* * * On the one hand, no consideration of policy or convenience should induce this court to exercise a power that does not belong to it. On the other hand, no consideration of policy or convenience should induce this court to surrender a power which it is its duty to exercise. But certainly mandamus should never issue from this court where it will not prove to be effectual and beneficial. It should not be awarded where it will *create discord* and confusion. It should not be awarded where mischievous consequences are likely to follow. Judgment should not be pronounced which might possibly lead

to *unseemly conflicts* or which might be *disregarded with impunity*. This court should offer no means by a decision for any *possible collision between it as the highest court in the Philippines and the Philippine Senate as a branch of a coördinate department*, or between the court and the Chief Executive or the Chief Executive and the Legislature." (Italics supplied.)

It is true that the Alejandrino case was one of mandamus. But under the principle of separation of powers, the rule is equally applicable to cases of injunction—in fact, to all cases where it is desired to have the judiciary directly control the action of either the executive or legislative department, or either branch of the latter, concerning matters within their respective province. Moreover, not much scrutiny is required to see that what is here pursued is, in practical effect, an order of this tribunal commanding the Senate or respondents, who represent it, to allow petitioners to remain seated in the Senate and freely exercise their alleged functions and rights as Senators: for no other is the effect of an order *prohibiting* the Senate or said respondents *from preventing* petitioners from remaining thus seated and exercising said functions and rights. Looking thru the form to the substance, the petition is really one of mandamus.

As to the writ of prohibition, the complaint asks this court, after trial on the merits, to enjoin respondents and each of them from preventing petitioners from continuing seated in the Senate and freely exercising the functions of Senators, and likewise, from adopting any other ulterior proceeding in execution of the resolution in question. The writ thus sought would, if granted, be definite and final in its effects. (Rule 67, sections 2, 8, and 9). Such a writ of prohibition would necessarily be perpetual or permanent in character and operation, in the same way that a final injunction under Rule 60, section 10, would permanently enjoin the act complained of and perpetually restrain the defendant from the commission or continuance of such act. It would enjoin respondents from preventing petitioners from acting as members of the Senate in exactly the same way and with exactly the same rights and privileges as the other members whose election is unchallenged and uncontested, not only temporarily but *for the entire term of the office*. But for this court to so order, it would necessarily have to base its judgment and decree upon the premise that petitioners have been duly and validly elected as members of the Senate. This would inevitably involve a determination of precisely the question, presently contested before the Electoral Tribunal for the Senate, as sole judge under the Constitution, of whether or not said petitioners have been duly and validly elected as Senators. This clearly would be an unconstitutional invasion of the sphere allotted by the

fundamental law to said Electoral Tribunal as the sole judge of all contests relating to the election returns and qualifications of the members of the Senate. All of which means that this court cannot constitutionally possess jurisdiction over the alleged main case of prohibition. This is another way of saying that petitioners are not entitled to the principal remedy thus sought by them from this court.

"SEC. 17(2). *Prima facie case*.—While it is not a ground for refusing a preliminary injunction that is not absolutely certain that complainant has the right to relief, yet to authorize a temporary injunction, complainant must make out at least a *prima facie* showing of a right to the final relief." (32 C. J., 38; Italics supplied.)

"Reason for rule.—The injunction *pendente lite* can be justified only upon the theory that it is a necessary incident to the granting of such *final* relief as complainants appear to be entitled to. The right to such *final* relief must appear; if not, the allowance of an injunction is erroneous. *Amelia Milling Co. vs. Tennessee Coal etc. R. Co.*, (123 Fed., 811 and other cases cited.) (32 C. J., 39, under note 76 beginning on p. 38; Italics supplied.)

Finally, we come to the great principle of separation of powers. In the case of *Alejandrino vs. Quezon, supra*, this court said (pp. 88, 89) :

"There are certain basic principles which lie at the foundation of the Government of the Philippine Islands, which are familiar to students of public law. It is here only necessary to recall that under our system of government, each of the three departments is distinct and not directly subject to the control of another department. The power to control is the power to abrogate and the power to abrogate is the power to usurp. * * *

* * * * * * * *
" * * * Mandamus will not lie against the legislative body, its members, or its officers, to compel the performance of duties purely legislative in their character which therefore pertain to their legislative functions and over which they have exclusive control. The courts cannot dictate action in this respect without a gross usurpation of power. So it has been held that where a member has been expelled by the legislative body, the courts have no power, irrespective of whether the expulsion was right or wrong, to issue a mandate to compel his reinstatement."

If mandamus will not lie to compel the performance of purely legislative duties by the legislature, its members, or its officers, how can, under the same principle, injunction or prohibition lie to enjoin or prohibit action of the Legislature, its members, or its officers, in regard to matters pertaining to their legislative functions and over which they have exclusive control? And if the courts are powerless to compel reinstatement of an expelled member of the legislative body, it seems inconceivable that under the same system of government the courts should possess jurisdiction to prohibit the expulsion in the first instance. And if the courts cannot interfere to prevent such expulsion, *a fortiori* they should lack authority to intervene to prevent a mere suspension, which is a less drastic measure against

the member. If the expulsion of a member of the Senate is purely a legislative question, as clearly decided in the Alejandrino case, the suspension of a member of the same body must equally be of the same nature.

In the same case this court, in remarking that some of the cases cited therein related to the chief executive rather than to the legislature, said that the same rules which govern the relations of the courts to the chief executive likewise govern the relations of the courts to the legislature.

In *Mississippi vs. Johnson and Ord* (4 Wall., 475), a bill was filed praying the United States Supreme Court to enjoin Andrew Johnson, President of the United States, and E. O. C. Ord, General Commanding in the District of Mississippi and Arkansas from executing certain acts of Congress. The court, per Chief Justice Chase, said that the single point for consideration was: Can the President be restrained by injunction from carrying into effect an Act of Congress alleged to be unconstitutional? It continued:

"The Congress is the Legislative Department of the Government; the President is the Executive Department. Neither can be restrained in its action by the Judicial Department; though the acts of both, when performed, are, in proper cases, subject to its cognizance.

"The impropriety of such interference will be clearly seen upon consideration of its possible consequences.

"Suppose the bill filed and the injunction prayed for allowed. If the President refuses obedience, it is needless to observe that the court is without power to enforce its process. If, on the other hand, the President complies with the order of the court and refuses to execute the Acts of the Congress, is it not clear that a collision may occur between the Executive and Legislative Departments of the Government? May not the House of Representatives impeach the President for such refusal? And in that case could this court interfere in behalf of the President, thus endangered by compliance with its mandate, and restrain by injunction the Senate of the United States from sitting as a court of impeachment? Would the strange spectacle be offered to the public wonder of an attempt by this court to arrest proceedings in that court?

"These questions answer themselves.

* * * * *

"We are fully satisfied that this court has no jurisdiction of a bill to enjoin the President in the performance of his official duties; and that no such bill ought to be received by us.

*"It has been suggested that the bill contains a prayer that, if the relief sought cannot be had against Andrew Johnson, as President, it may be granted against Andrew Johnson as a citizen of Tennessee. But it is plain that relief as against the execution of an Act of Congress by Andrew Johnson is relief against its execution by the President. * * *."*

In the case of *Sutherland vs. Governor of Michigan* (29 Mich., 320), Justice Cooley, speaking for the Supreme Court of Michigan, had the following to say:

" * * Our government is one whose powers have been carefully apportioned between three distinct departments, which emanate alike from the people, have their powers alike limited and defined by*

the constitution, are of equal dignity, and within their respective spheres of action equally independent.

*** * * * *

"It is true that neither of the departments can operate in all respects independently of the others, and that what are called the checks and balances of government constitute each a restraint upon the rest. * * * But in each of these cases the action of the department which controls, modifies, or in any manner influences that of another, is had strictly within its own sphere, and for that reason gives no occasion for conflict, controversy or jealousy. The Legislature in prescribing rules for the courts, is acting within its proper province in making laws, while the courts, in declining to enforce an unconstitutional law, are in like manner acting within their proper province, because they are only applying that which is law to the controversies in which they are called upon to give judgment. It is mainly by means of these checks and balances that the officers of the several departments are kept within their jurisdiction, and if they are disregarded in any case, and power is usurped or abused, the remedy is by impeachment, and not by another department of the Government attempting to correct the wrong by asserting a superior authority over that which by the Constitution is its equal.

"It has long been a maxim in this country that the Legislature cannot dictate to the courts what their judgments shall be, or set aside or alter such judgments after they have been rendered. If it could, constitutional liberty would cease to exist; and if the Legislature could in like manner override executive action also, the Government would become only a despotism under popular forms. *On the other hand it would be readily conceded that no court can compel the Legislature to make or to refrain from making laws, or to meet or adjourn at its command, or to take any action whatsoever, though the duty to take it be made ever so clear by the Constitution or the laws.* In these cases the exemption of the one department from the control of the other is not only implied in the framework of government, but is indispensably necessary if any useful apportionment of power is to exist.

*** * * * *

"It is not attempted to be disguised on the part of the relators that any other course than that which leaves the head of the executive department to act independently in the discharge of his duties might possibly lead to unseemly conflicts, if not to something worse, should the courts undertake to enforce their mandates and the executive refuse to obey. * * * And while we should concede, if jurisdiction was plainly vested in us, the inability to enforce our judgment would be no sufficient reason for failing to pronounce it, especially against an officer who would be presumed ready and anxious in all cases to render obedience to the law, yet in a case where jurisdiction is involved in doubt it is not consistent with the dignity of the court to pronounce judgments which may be disregarded with impunity, nor with that of the executive to place him in position where, in a matter within his own province, he must act contrary to his judgment, or stand convicted of a disregard of the laws."

In the same case of *Alejandrino vs. Quezon (supra)*, we find the following quotation from *French vs. Senate of the State of California* (146 Cal., 604) :

"Even if we should give these allegations their fullest force in favor of the pleader, they do not make a case justifying the interposition of this court. Under our form of government the judicial

department has no power to revise even the most arbitrary and unfair action of the legislative department, or of either house thereof, taken in pursuance of the power committed exclusively to that department by the constitution. * * *

From the case of Massachusetts *vs.* Mellon (262 U. S., 447; 67 Law. ed., 1078, 1084), we quote the following passage:

"* * * If an alleged attempt by congressional action to annul and abolish an existing state Government, 'with all its constitutional powers and privileges,' presents no justiciable issue, as was ruled in Georgia *vs.* Stanton, *supra*, no reason can be suggested why it should be otherwise where the attempt goes no further, as it is here alleged, than to propose to share with the state the field of state power."

In our case the Senate action through the Pendatun Resolution and the acts alleged to have been performed thereunder, are still less transcendental in comparison to those involved in Georgia *vs.* Stanton (*supra*), and Massachusetts *vs.* Mellon (*supra*), as should be obvious to every one.

In the case of Barry *vs.* United States (270 U. S., 597; 73 Law. ed., 867, 872), the Federal Supreme Court was concerned with a case where the United States Senate, pending the adjudication of the validity or nullity of the election of William S. Vare as Senator, refused acceptance of his credentials consisting of the returns, upon the face of which he had been elected, and a certificate from the Governor of the State to that effect, and refused to administer the oath of office to him, and to accord the full right to participate in the business of the Senate. It was held that all this "was a matter within the discretion of the Senate." This is strikingly similar to the instant case where the Senate of the Philippines, which I maintain retained its inherent power of suspension after the transfer to the Electoral Tribunal for the Senate of its exclusive jurisdiction to judge contests relating to the election, returns, and qualifications of its members, deemed it to be necessary or convenient to suspend the administration of oath to petitioners, their seating in the Senate and their participation in its deliberations, pending final decision by said Electoral Tribunal of the contest concerning their election, which matters were in my opinion within the discretion of said Senate.

In the case of Massachusetts *vs.* Mellon (*supra*), the Supreme Court of the United States concluded its decision in these words:

"* * * Looking through forms of words to the substance of their complaint, it is merely that officials of the executive department of the Government are executing and will execute an act of Congress asserted to be unconstitutional; and this we are asked to prevent. To do so would be not to decide a judicial controversy, but to assume a position of authority over the governmental acts of another and co-equal department—an authority which plainly we do not possess."

Strikingly similar, our case is one wherein the substance of the complaint is merely that respondents President and Members of the Philippine Senate have executed and will execute a resolution of that body asserted to be unconstitutional; and this we are asked to prevent, to paraphrase the Federal Supreme Court. I could not do better than make mine the conclusion of that High Tribunal that rather than a judicial controversy which we are asked to decide, it is a position of authority over the governmental acts of another and co-equal department which we are asked to assume—an authority which painly we do not possess.

In the adjudicated cases, it has often been said that in actual and appropriate controversies submitted to the courts the judiciary has the constitutional power to declare unconstitutional any legislative or executive act which violates the Constitution; thus, in the case of *Angara vs. Electoral Commission* (63 Phil., 139, 182), the fourth conclusion established by this court was as follows:

* * * * *

“(d) That judicial supremacy is but the power of judicial review in actual and *appropriate* cases and controversies, and is the power and duty to see that no one branch or agency of the Government transcends the Constitution, which is the source of all authority.”
(Italics supplied.)

But I am of the considered opinion that, aside from such writs, as that of habeas corpus, as may be guaranteed in the Constitution, all others of a purely statutory origin and coercive in their operation are not issuable by the judiciary against either of the other coordinate and co-equal departments. In the latter cases, I think the function of the judiciary, with the Supreme Court as the final arbiter, does not go beyond the declaration of constitutionality or unconstitutionality of the legislative or executive act assailed. But some would ask how such a judgment could be enforced as against the other two departments or either of them. I believe that in a democratic system of government, built as it is upon the principle of separation of powers, with the consequent freedom of each department from direct control by the others, the effectiveness of the adjudications of the courts, in cases properly coming under their jurisdiction, has perforce to depend upon the conscience of those at the head of, or representing, the other two departments, and their loyalty to the Constitution. I for one am persuaded that when the officers in whom at the time are vested the executive and legislative power should see that the highest court of the land, at the head of the judicial power, has, in a case properly brought before it and within its legitimate jurisdiction, decided that an act of the executive or legislative department is unconstitutional, their conscience and loyalty to the Constitution can safely

be relied upon to make them, with good grace, respect such final adjudication. As was said in *Angara vs. Electoral Commission (supra)*, our Constitution is, of course, lacking perfection and perfectibility; but it has been deemed by the framers of this and similar antecedent organic laws preferable to leave the three coördinate departments without power of coercion, one against the other, with the exceptions which may have been therein established, to open the door to mutual invasion of jurisdiction, with the consequent usurpation of powers of the invaded department. And it is here where appeal will have to be made to the conscience of the department concerned. If the executive or legislative department, in such cases, should abuse its powers or act against good conscience, or in a manner disloyal to the Constitution, ignoring the judgment of the courts, the aggrieved party will have to seek his remedy through the ordinary processes of democracy.

During our consideration of this case reference has been made to the decision of the Supreme Court of the United States in *Barry vs. United States* (279, U. S., 597; 73 Law. ed., 867). But an examination of the facts of that case will readily reveal that the question of whether or not Cunningham should have been released on habeas corpus arose from his arrest by order of the United States Senate in the course of certain proceedings before that body, sitting as a tribunal to judge of the election, returns and qualifications of William S. Vare for Senator. It was held that:

"In exercising the power to judge of the elections, returns and qualifications of its members, the Senate acts as a *judicial* tribunal, and the authority to require the attendance of witnesses is a necessary incident of the power to adjudge, in no wise inferior under like circumstances to that exercised by a court of justice." (P. 873).

In the last sentence of the same paragraph the court speaks of the power of the Senate "to compel a witness to appear to give testimony necessary to enable that body efficiently to exercise a legislative function;" and the court proceeds: "but the principle is equally, if not *a fortiori* applicable where the Senate is exercising a *judicial* function." (Italics supplied). It will thus appear that the powers of the Senate there involved were not legislative but judicial in character, which fact differentiates the case from those here cited, wherein purely legislative powers or functions of the Legislature or any branch thereof were in question. There is no wonder, therefore, that the Federal Supreme Court, in the Barry case, by what really amounts to an obiter, made the remark at the conclusion of its opinion that "if judicial interference can be successfully invoked it can only be upon a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process of law," the power referred

to being the *judicial* power to which the court refers in the paragraph which I have quoted above. In such a case, the Senate being permitted by the Constitution to exercise, for a special purpose, a portion of the powers which primarily belong to the judiciary, it is but proper that any abuse of such limited and special power, constituting a denial of due process of law, should have its redress in the judicial department, with the Supreme Court as the final arbiter; not so in cases where any branch of the legislative department is exercising powers or functions purely legislative in nature and, therefore, within its allotted province under the Constitution, as in the case at bar. The Federal Supreme Court speaks of "judicial interference" without specifying its kind or nature. Much less does it say that such interference will necessarily be coercive in character. But even if it had in mind the writ of habeas corpus there applied for, this being a high prerogative writ (29 C. J., 6, 7) the privilege of which is guaranteed by the Bill of Rights in our Constitution [Article III, section 1, paragraph (14)], it is in a class apart from the coercive writs or process spoken of elsewhere in this opinion—it is not merely a statutory remedy, such as injunction, prohibition, etc., but a constitutional remedy which by its very nature should be binding, in proper cases, upon any department or agency of the Government to which it may be lawfully addressed.

TUASON, J., concurring and dissenting:

I concur in the result. On the authority of Alejandrino *vs.* Quezon (46 Phil., 83), "the writ prayed for cannot issue for the whole simple reason that the Supreme Court does not possess the power of coercion to make the Philippine Senate take any particular action."

With regret I have to dissent from the majority opinion upholding the constitutionality of the Pendatun Resolution.

That the National Assembly, now Congress, retains the power it possessed prior to the approval of the Constitution over the uncontested elections, returns and qualifications of its members, cannot successfully be disputed. This power remains intact, unaffected by section 11, Article VI of the Constitution, which limits the jurisdiction of the Electoral Tribunal to elections, returns and qualifications of members of Congress that are the subject of protest.

But within this limited sphere of its jurisdiction, the authority of the Electoral Tribunal is supreme, absolute, exclusive. In the language of section 11, Article VI of the Constitution (*supra*), "the Electoral Tribunal shall be the *sole judge* of all contests relating to the election, returns, and qualifications of their respective members."

In *Angara vs. Electoral Commission* (63 Phil., 139), it was held, in the light of the deliberations of the Constitutional Convention, that the purpose of the creation of the Electoral Commission "was to transfer in its totality all the power previously exercised by the legislature in matters pertaining to contested elections of its members, to an independent and impartial tribunal," which, though constituted by majority members of the legislature, "is a body separate from and independent of the legislature." It was said that "the grant of power to the Electoral Commission to judge all contests relating to the election, returns, and qualifications of members of the National Assembly, is intended to be as complete and unimpaired as if it had remained originally in the legislature;" that "the express lodging of that power in the Electoral Commission is an implied denial of the exercise of that power by the National Assembly," and that "this is as effective a restriction upon the legislative power as an express prohibition in the Constitution." In other parts of the decision, this court characterized as exclusive the jurisdiction of the Electoral Commission over protests against the election of members of the National Assembly and "determination thereof."

No stronger language than this can be found to emphasize the completeness of the inhibition on the National Assembly from interference in any matter pertaining to an election protest filed with the Electoral Commission.

The resolution in question destroys the exclusive character of the Electoral Tribunal's power. It encroaches upon the Electoral Tribunal's prerogative as the *sole* judge of all contests relating to the election, returns, and qualifications of the members of the Congress. In seeking the suspension of the petitioners on the strength of the reported election irregularities in Central Luzon, irregularities which constitute the sole basis of the main protest, to that extent the resolution passed judgment on the truth or probabilities of the charges, although the judgment may not have been intended as final. At the very least, the resolution touches directly on a matter which involves a senatorial election contest. From whatever standpoint one may look at the Pendatun Resolution, it is hard to escape the conclusion that it oversteps the bounds of the Senate's authority and trespasses on a territory entirely reserved for the Electoral Tribunal.

Viewed from another angle, the legality of petitioners' suspension is open to attack. This suspension was resorted to as an auxiliary and interlocutory step subordinated to the final outcome of the election protest filed against them. Only a few will disagree with the proposition that the power of the Senate or the House of Representatives to suspend its members as a subsidiary measure for causes connected

with their election, returns, and qualifications, is, if such power exists, an implied power derived from the power to remove or exclude, or what is the same thing in this connection, the power to invalidate an election. It follows that where the principal power has been taken away, as in the case of protested elections, the accessory power to suspend vanishes. The fact that the power to suspend may not have been transferred, as is contended, to the Electoral Commission, does not argue in favor of the contention that it still resides in the Congress.

PERFECTO J., dissenting:

I.—TO MEET OR NOT TO MEET THE CHALLENGE

The challenge has been flung. Shall we evade it by an unmanly and shameful retreat?

By this case the highest tribunal of the land is undergoing a crucial test. Shall it do honor to its constitutional rôle as the last bastion of the "régime of justice" proclaimed by the Constitution in its preamble, as one of the fundamental goals of the government it established?

The Constitution itself is on the balance. Fundamental principles of good government, basic human rights, prime rules for the existence of an orderly society have been trampled upon. The victims come to the Supreme Court where the last line of democracy lies. Shall we allow that line to give in under the onslaught? Shall we betray the faith of our people?

Shall we refuse to do our part, our duty, our mission, to maintain in our country a government of laws, only because we have to face a powerful group of senators?

Three senators of the Philippines, duly proclaimed as elected by 1,736,407 combined votes cast by qualified Filipino electors, immediately after assuming their respective positions, were deprived of their seats in the Senate through the unsavory, irresponsible, and subversive action of a tyrannical and ruthless majority who would not stop even to a downright trampling of the fundamental law. The victims come to us clamoring for relief and justice. Shall we meet the clamor with deaf ears? Shall we remain aloof with callous indifference to a flagrant violation of the Constitution? Shall we leave the victims at the mercy of a despotic oligarchy and allow the latter to supplant democracy? Shall we leave them instead to pin their hopes on popular justice, if they be patient enough not to seek justice by their hands or by the people who exalted them by their suffrage to be their spokesmen in the Senate and in Congress?

Within the remaining span of our life, never shall we be more conscious of the great privilege of performing our duties as the ultimate guardians of the fundamental source

of vitality of our nation as an organic whole, whether normality prevails or the people boil in the cauldron of exsurgent partisan passions. The very essence of constitutional government is under our trust, and the momentous question is whether we shall betray that trust and keep unblemished our judicial escutcheon. The blinding grandeur of the unprecedented opportunity challenging us cannot fail to move our whole being, from enderon to the inner recesses of heart and brains, in the effort to be equal to the high duty.

II.—CONFLICT OF PHILOSOPHIES

Under the admitted lack of perfection and perfectibility of our Constitution, it being the work of men, still we can not subscribe to the nihilistic theory that there are flagrant violations of its provisions, committed in utter oppression of a minority, to whom our government is incapable of giving redress, and when a judicial controversy arising from them is submitted for our decision we must allow ourselves to be petrified in buddhistic nirvane and declare ourselves impotent, like the bystander who can not lift a finger to save people crying for help inside a burning house or a little child inclosed in a cage full of hungry tigers.

Here, three senators of the Philippines are wantonly deprived of their seats in the Senate as constitutional representatives of the people. Here, chosen spokesmen of many hundreds of thousands of qualified voters, are silenced and muzzled, and their constitutional rights trampled upon. The transgression of the fundamental law is evident. But it is alleged that the Supreme Court is powerless to protect the victims, to vindicate their constitutional rights and those of the qualified voters who elevated them to office, and to restore law. It is alleged that within our system of government there is absolutely no remedy for such an oppression. The theory is an unmistakable upshot of a philosophy of frustration, defeatism, and despair. We can not subscribe to such an effete philosophy, afflicted with moral asthenia, unable to see but an horizon of failure. We refuse to adopt the despairing and fatalistic attitude of decrepit and impotent senility. Philosophical eunuchry is incompatible with eunomy. Gelded intellectual virility or adynamic moral effeminacy has no place within the system of Philippine constitutional democracy.

The framing of our Constitution is based on a philosophy of faith and hope, the philosophy of healthy, vigorous and courageous youth, full of the zest of life, brimming with sturdy and exalted ideals, drunk with the wine of inspired ambition and filled with enthusiasm for all good and beau-

tiful things, always dreaming of a nobler and more glorious future. Within that strenuous philosophy there is no place for the theory of impotency of our system of government in redressing constitutional transgressions and of the incapability of the courts of justice in giving protection and redress to the victims.

III.—QUALITIES REQUIRED IN JUDICIAL FUNCTION

We cannot accept the invitation to bury our heads in ostrich-like fashion in the sands of indifference and inaction because, in having to exercise the constitutional function of administering justice, we will be constrained to face and take action against powerful, defiant or arrogant parties. It is precisely in cases like this where we should never show the least hesitancy in the performance of our official duties and in the exercise of the loftiest function of humanity: the administration of justice.

The judicial function calls for those qualities which, for lack of better words, are described as manliness, moral courage, intellectual decision, firmness of character, and steadfastness of convictions. We accepted our position in this court fully cognizant of the grave responsibilities it entails and aware that it will exact from us all the best that nature has bestowed on us. We must not give less. We must not betray popular trust. We should not disappoint the people.

IV.—FACTS IN THE CASE

The Commission on Elections, pursuant to the provisions of section 11 of Commonwealth Act No. 725, made the canvass of the votes cast for senators in the election held on April 23, 1946, and on May 23, 1946, proclaimed petitioners as elected. (*See accompanying Appendix A.*)*

Of the 16 senators proclaimed elected, 9 belong to the Liberal Party, respondents Jose A. Avelino, Vicente Francisco, Vicente Sotto, Melecio Arranz, Ramon Torres, Mariano J. Cuenco, Olegario Clarin, Enrique Magalona, and Salipada Pendatun; and 7 to the Nacionalista Party, the 3 petitioners and Tomas Confesor, Carlos P. Garcia, Tomas Cabili, and Alejo Mabanag.

Of the senators elected in 1941, 8 remain in office, 4 belonging to the Liberal Party, Domingo Imperial, Proceso Sebastian, Sa Ramain Alonto, and Emiliano Tria Tirona; and 4 to the Nacionalista Party, Eulogio Rodriguez, Nicolas Buendia, Pedro Hernaez, and Vicente Rama.

The Senate therefore, is actually composed of 13 Liberals, with a precarious majority of 2, and a minority of 11 Nacionalistas.

* Omitted.

On May 25, 1946, in accordance with Commonwealth Act No. 725, the Senate convened to inaugurate the regular legislative session for this year.

The session, with all senators present, except Senators Sa Ramain Alonto and Vicente Rama, began by the reading of the proclamation made by the Commission on Elections, as copied in the accompanying Appendix A.¹ No objection having been raised against the proclamation, there being no question as to its legality and regularity, with all the 22 members present, including petitioners, recognized and accepted as full-fledged senators of the Philippines, the Senate proceeded to elect its President, a vacant position previously held by President Manuel A. Roxas. The result was: 3 absent; 2 abstained; for respondent Senator Jose A. Avelino, 10 votes, including his own; for petitioner Senator Jose O. Vera, 8 votes; and for Senator Carlos P. Garcia, 1 vote.

After respondent Senator Avelino assumed his office as President of the Senate, it was moved that he receive the collective oath of office of the newly elected senators, and, at that juncture, Senator Salipada Pendatun proposed the adoption of a resolution herein attached as Appendix B,² as an historical exhibit of the sourviest dealing a minority has ever endured, the dispositive part of which reads as follows:

"Now, THEREFORE, be it resolved by the Senate of the Philippines, in session assembled, as it hereby resolves, to defer the administration of oath and the sitting of JOSE O. VERA, RAMON DIOKNO, and JOSE ROMERO, pending the hearing and decision on the protests lodged against their elections, wherein the terrorism averred in the report of the Commission on Elections and in the report of the Provost Marshal constitute the ground of said protests and will therefore be the subject of investigation and determination."

Debate began upon the adoption of the proposed resolution. Afterwards it was unanimously agreed-upon to postpone further debate on the question for Monday, May 27, 1946.

The Senate proceeded thereafter to consider another matter during which, in protest against the action taken by the majority on the said matter, all the minority senators walked out from the session hall, leaving therein only 12 majority senators, including the President of the Senate. Taking advantage of the absence of all the minority senators, the 12 majority senators remaining in the session hall approved and adopted the Pendatun Resolution, notwithstanding the fact that the Senate had already postponed the further consideration of said resolution to May 27, 1946, and the 12 majority senators, for lack of

¹ 2. Omitted.

quorum, could not, under the Constitution, proceed with the business of the same and, therefore, had not the authority either to reconsider the resolution taken by the Senate, postponing the continuation of the debate on the Pendatun Resolution to May 27, 1946, or to consider and approve said resolution.

At the time the petition has been filed, May 27, 1946, respondent Senator Jose Avelino, President of the Senate, had already begun to put into effect the Pendatun Resolution by ordering the Secretary of the Senate to erase from the roll of the same the names of the three petitioners.

Among the three petitioners who are complaining of being deprived of their constitutional and legal right to continue sitting in the Senate of the Philippines is the minority Floor Leader Jose O. Vera, who lost the election for President of the Senate by the bare difference of two votes. All the three petitioners by the high positions they formerly occupied in the Government of which we may take judicial notice, are recognized as political leaders of national stature, whose presence will do honor to any legislative chamber of any country in the world.

V.—PRELIMINARY INJUNCTION

Upon the facts above related and the allegations made in the petition under oath, including the one to the effect that the respondents of the majority party are determined to put into effect immediately the Pendatun Resolution, to deprive the petitioners of their right to sit in the Senate, the "sinister purpose" of which was the approval, without the intervention and participation of petitioners, of important measures, including an alleged terroristic one for judicial reorganization and the highly controversial Bell Bill, as soon as the petition was submitted on the night of May 27, 1946, the undersigned issued the preliminary injunction prayed for in the petition upon petitioners' filing a cash bond in the amount of ₱1,000. (Copy of the order is attached as Appendix D.)¹

On May 29, 1946, the Supreme Court in banc was specially called to session with the specific purpose of considering the issuance of a writ of preliminary injunction. As the court functioning is a special division of six, and the Supreme Court in banc was then on vacation, the session had to be called upon the initiative of the Chief Justice. In the meantime, the service of the writ was suspended.

The Supreme Court in banc adopted then the following resolution:

"The court in banc, having been informed that a writ of preliminary injunction has been issued in G. R. No. L-543, Jose O. Vera

¹ Omitted.

vs. Jose A. Avclino by Justice Perfecto under sections 2 and 5 of Rule 60, Resolved to set for hearing the petition for preliminary injunction on Saturday, June 1st, 1946, at 10 o'clock a.m., for the purpose of determining whether or not the issuance of said writ was justified. Let notice be given to all the parties.

"The Chief Justice and Associate Justices Paras, Hilado and Bengzon voted to dissolve the preliminary injunction in the meantime."

Upon the adoption of the above resolution, the undersigned instructed the clerk to proceed with the service of the writ of preliminary injunction, which was immediately served to respondents.

On June 3, 1946, a majority adopted the following resolution, dissolving the writ of preliminary injunction:

"Considering that the preliminary injunction was issued in the case of Jose O. Vera, petitioners, vs. Jose A. Avelino, respondents, G. R. No. L-543, to preserve the *status quo* and thus prevent the execution of the acts alleged under oath in the last part of paragraph X of the petition, without the intervention of the petitioners; and taking into consideration that this court, after hearing both parties, at any rate believes and trusts that the respondents will not carry out said acts during the pendency of his proceeding, this court, without deciding whether or not the said injunction was justified, hereby resolves to dissolve it in the meantime, without prejudice to whatever action or decision this court may take or render on the questions involved in this case including that of jurisdiction.

"Justice Parás concurs in the result.

"Justice Jaraxilla absent.

"Justice Perfecto dissents as follows:

"The facts alleged in the petition show that petitioners' fundamental rights have been trampled upon in open defiance of the law and the Constitution; that respondents, in adopting the Pendatun Resolution and in trying to enforce it, usurped constitutional functions exclusively entrusted by the people to the Electoral Tribunal of the Senate, as an independent and separate department of the Government; that the people at large, who voted for and of whom petitioners are legal representatives, are intended to be deprived of their voice and vote on matters of transcendental importance to the welfare and future of this nation, that are and to be under consideration of the Senate. Respondents did not deny these facts. They reduced themselves to impugn the inherent and undisputable jurisdiction of this Supreme Court to pass upon the above-mentioned flagrant violations of the Constitution and to afford coercive relief to the victims thereof. We cannot agree with an action which history may give a damaging interpretation. We must have a proper respect for the judgment of posterity. We have a plain duty to uphold the Constitution. We must not shirk that sacred duty. We are called upon to protect the constitutional prerogatives of the representatives of the people. Our loyalty to the people does not permit any alternative action to that of extending the cloak of our authority so that the representatives of the people may continue performing unhampered their fundamental prerogatives and functions. We cannot agree with any suspension of their exercise in utter violation of the fundamental law of the land. The sovereignty of the people itself is involved in this case. We cannot suffer the idea that in one of the crucial moments in the performance of our functions and in the compliance of our duty as is

pointed out by our conscience, we have faltered. The preliminary injunction must not be dissolved."

Although the belief expressed in the majority resolution is, in effect, a moral injunction, addressed solely to the sense of responsibility, fairness, decency, and patriotism of respondents, without any enforceable legal sanction, the majority being sure that respondents will not betray the trust reposed on them, yet we felt it our duty to dissent because in questions so important as those raised in this case we do not agree with indirect and diplomatic procedures, with wavering, innocuous and hesitating action, with Laodicean measures and resolutions, with equivocal, furtive, and not forth putting attitude. In judicial matters, the best policy is forthrightness, not ambiguity. The way of Themis is always rectilinear. Her path is never tortuous, labyrinthine, or misleading.

Without any attempt at prophecy, not long after the resolution dissolving the writ of preliminary injunction, events have shown that moral, indirect, or admonitory injunctions by courts of justice are mere sounds transcribed on scraps of paper, not worthier than the sheets on which they are written. Hocking at the credulity, ingenuousness, and complaisance of the majority of this court, with the exclusion of petitioners, respondents proceeded to carry out the acts alleged in the last part of paragraph X of the petition, such as the approval of the Bell bill, the revamping of the judiciary system of the Philippines, including the unconstitutional reduction of the membership of the Supreme Court from eleven to seven, and the measure which would wipe out the time-honored principle of stability in the Philippine civil service system, by placing many thousands of public officers and employees in iniquitous insecurity in the positions in which they have invested the best energies in years of public service.

For the nonce, it will be hard to gauge and appraise the full consequences of the resolution of June 5, 1946, dissolving the writ of preliminary injunction based on the majority's belief and trust that events have shown to be completely hazy and groundless. It is only our fervent hope that the consequences, whatever they may be, may not dampen the enthusiasm of those who have reposed so much faith in the success of our sovereign Republic as the pur-suant heralding a new era to all subjugated peoples.

On June 8, 1946, petitioners filed a motion praying that the above majority's resolution of June 3, 1946, be reconsidered and that the writ of preliminary injunction be restored. It remained deplorably unacted upon for weeks until respondents were able to consummate the acts above mentioned.

That action continues now to be pending before us for decision, the same as respondents' motion to dismiss.

VI.—UNCONSTITUTIONAL USURPATION

Section 11 of Article VI of the Constitution reads as follows:

"The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective members. Each Electoral Tribunal shall be composed of nine members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be members of the Senate or of the House of Representatives, as the case may be, who shall be chosen by each House, three upon nomination of the party having the largest number of votes and three of the party having the second largest number of votes therein. The senior Justice in each Electoral Tribunal shall be its Chairman."

The constitution of the Electoral Tribunals is provided in section 13 of Article VI of the Constitution, wherein it is required that they shall be constituted "within thirty days after the Senate and the House of Representatives shall have been organized with the election of their President and Speaker, respectively."

From the foregoing, it is evident that the power to judge "all contests relating to the election, returns, and qualifications" of senators and representatives, is exclusively lodged in the respective Electoral Tribunal, the exclusivity being emphasized by the use of the word "sole" by the drafters of the Constitution.

By the Pendatun Resolution, respondents exercised, in effect, the power to judge "the election, returns, and qualifications" of petitioners as senators of the Philippines, duly proclaimed as elected on April 23, 1946.

From the very words of respondents themselves there can be no possible mistake as to the fact that, in adopting the Pendatun Resolution, they exercised the judicial power to judge a controversy concerning the election of petitioners as senators of the Philippines.

From their motion to dismiss dated June 6, 1946, through Solicitor-General Lorenzo Tañada and Atty. Vicente J. Francisco, himself one of the respondents and is the majority floor leader of the Senate, referring to the reasons behind the adoption of the Pendatun Resolution, we read:

"The Senate considers it against its dignity and inimical to its welfare and integrity to allow petitioners to sit as members *pending the final determination of the question whether or not they were duly elected* * * * it was an expression of a legislative (?) policy, a desire on the part of the Senate to recognize only members *whom it believes were legally elected.*" (Italics supplied.)

The respondents do not constitute the Senate Electoral Tribunal which has the exclusive jurisdiction to exercise

said power. The fact that later three among the respondent Senators were chosen to be members of said Tribunal does not change the situation, nor cure the constitutional inroad. They, therefore, in adopting the Pendatun Resolution, usurped a power, a jurisdiction, and an authority exclusively belonging to the Senate Electoral Tribunal. The usurpation has been perpetrated in flagrant violation of the Constitution. The Pendatun Resolution, being unconstitutional, is null and void *per se*.

Among the Justices who voted to declare it invalid, because it wimbles the fundamental law, are two former members of the constitutional convention and of its committee on style, who took active part in the creation of the Electoral Commission, and a former member of the Second National Assembly which, by constitutional amendment, created the present Senate and the two Electoral Tribunals. Justice Hontiveros, one of the present three Justices who took part in the framing of the original Constitution, did not participate in the voting.

We have to bring out these facts because it is only logical that the co-authors of the Constitution and of its amendments must be in a better position to interpret their own will, intention, and purposes as they expressed them in their own words in the fundamental law.

VI-A.—THE INTENT OF THE PEOPLE IN THE CONSTITUTION IS IDENTICAL WITH THE INTENT OF THEIR DELEGATES

Even the majority themselves admit that, in construing the Constitution of the United States, the writings in "The Federalist" of the delegates to the constitutional convention, such as Hamilton, Madison, and Jay, have persuasive force, the same as the book of Delegate Aruego and of other members of our own constitutional convention concerning the Constitution of the Philippines. It is only logical that the authors themselves should be in the advantageous situation of construing more exactly the product of their own minds.

But, as if repenting for making the admission, foreseeing the damaging consequences thereof for the majority's position, they tried to neutralize it or subtract its validity by seconding the sophistic distinction made by Willoughby as to the conclusiveness of the parliamentary proceedings as means of proper construction of the Constitution, on one side, and of the statutes, on the other, since in the legislative proceedings "it is the intent of the legislature we seek," while in the proceedings of the constitutional convention "we are endeavoring to arrive at the *intent of the people* through the discussions and deliberations of their representatives." The distinction is absolutely groundless. In either the constitutional convention or the Legisla-

ture, it is the people who speak through their delegates and representatives, and the intent of the people may only be gathered from the utterances of said delegates and representatives. The "intent of the Legislature" in ordinary laws is the "intent of the people," both being undistinguishable for all practical purposes. And the "intent of the people" in a constitutional convention is identified with the "intent" of their delegates thereof. It is absurd, impractical, and against the realities of all experience to mention the "intent of the people" as something different from and in opposition to the intent of their own representatives. The delegates and representatives are the mouthpiece of the people. In the system of representative democracy prevailing in the United States of America and in the Philippines, the people never speak by themselves, but by their chosen mouthpieces—the voters in the matter of the selection of government officers, and the officers in the matter of expressing the people's will in government or state matters.

There is no essential difference between the parliamentary rôle of the delegates to a constitutional convention and that of the members of a legislature. The fact that the former are charged with the drafting of the fundamental law and the latter with the enactment of ordinary laws does not change their common character as representatives and mouthpieces of the people. In either the Constitution or in the ordinary statutes, it is the thought and the will of the people which are expressed. What that thought and that will are can only be gathered from the way they are expressed by the representatives. The thought and the will of the people are interpreted and expressed by the representatives and crystallized in the words uttered and written by them. No one may pretend to know the meaning of the expressions uttered or of the provisions written better than the very persons who pour on them their own thoughts and decisions. The thought and the will of the people remain in the abstract, are incapable of caption, are more ideological entities, and do not acquire form and can not be pointed out or determined until and unless their representatives in the constitutional convention or in the Legislature express them in concrete and specific words of their own. The collective entity of the people is, by its very inbeing, inarticulate. It becomes articulate only through its chosen representatives. Its will is an aphlogistic amber that becomes afame only in the parliamentary actuations of its delegates.

And if we are not dreaming, we must accept the fact that what the representatives of the people stereotype either in a constitution or in ordinary laws are their own personal opinions and convictions, their own individual and personal

thoughts and wills, although in doing so they act in their representative capacity. We, the members of the Supreme Court, are also representatives of the people and are performing our official functions in a representative capacity, but the opinions we express and write flow, not from any extrinsic or indwelling reservoir of justice, reserved to us by the sovereign people, but from the spiritual fountain of our own personal consciousness.

We will not dare to dispute any one's claim to wield, in interpreting the fundamental law, the same authority of such judicial giants as Marshall and Holmes, but we consider it completely out of place to conclude that, because in the present constitutional controversy we maintain that the co-authors of our fundamental law are in a better position to construe the very document in which they have infused the ideas which boiled in their minds, and gave a definite form to their own convictions and decisions, said great justices shall not be so authoritative in expounding the United States Constitution, because they were not members of the federal convention that framed it, even though, it should be recalled, Chief Justice Marshall was one of the outstanding figures in the Virginia convention that ratified said Constitution. The mention is out of place, because it has not been, and can not be, shown that the constitutional opinions of Marshall and Holmes, for which they were hailed as authorities, are in conflict with what Madison, Hamilton, Jay, and other delegates to the federal convention had said or written as to the intent expressed in said fundamental law; while in the present controversy, there is an actual conflict of interpretation between former delegates and those who never have been, and it happens that the former members of the constitutional convention taking part in the disposal of this case, are unanimous in construing the document in the drafting of which they took personal and active part.

Of course, in our atmosphere of freedom of opinion, outsiders may perfectly claim and pretend to know what the delegates to our constitutional convention intended to express in the Constitution better than the delegates themselves, as it is possible for some anthropologists to claim that they are in a position to recognize the children of some parents better than the parents themselves. But everybody must also agree that such feats of clairvoyance are not within the range of normal experience and, therefore, must not ordinarily be accepted at their face value.

VII.—UNCONSTITUTIONAL PROCEDURE

The Pendatun Resolution has been adopted when there was no quorum in the Senate. Those present were only 12, all respondent senators.

When respondents adopted the resolution, they purportedly adopted it as a resolution of the Senate.

Section 10(2) of Article VI of the Constitution provides that "a majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may compel the attendance of absent members in such manner and under such penalties as such House may provide."

It is evident, therefore, that, to do business, the Senate, being composed of 24 members, needs the presence of at least 13 senators. "A smaller number may adjourn from day to day and may compel the attendance of absent members," but not in exercising any other power, such as the adoption of the Pendatun Resolution.

The procedure used by respondents in adopting the Pendatun Resolution is, therefore, conclusively unconstitutional.

VIII.—CRIMINAL OFFENSES

Petitioners are among the senators who, having been proclaimed elected by the Commission on Elections, are duty bound to assume office from May 23, 1946, under the following mandatory provision of section 12 of Commonwealth Act No. 725:

"SEC. 12. The candidates for member of the House of Representatives and those for Senator who have been proclaimed elected by the respective Board of Canvassers and the Commission on Elections shall assume office and shall hold regular session for the year nineteen hundred and forty-six on May twenty-five, nineteen hundred and forty-six. Within thirty-five days after the election has been held, both Houses of Congress shall meet in session and shall publicly count the votes cast for the offices of President and Vice-President, in accordance with Article VII, section two of the Constitution. The persons respectively having the largest number of votes for President and Vice-President shall be declared elected; but in case two or more candidates shall have an equal and largest number of votes for either office, one of them shall be chosen President or Vice-President, as the case may be, by a majority vote of the members of Congress in joint session assembled."

If petitioners should fail to discharge the duties of their respective offices, they will incur criminal responsibility and may be punished, according to the Penal Code, with *arresto mayor* or a fine not exceeding 1,000 pesos, or both

"ART. 234. *Refusal to discharge elective office.*—The penalty of *arresto mayor* or a fine not exceeding 1,000 pesos, or both, shall be imposed upon any person who, having been elected by popular election to a public office, shall refuse without legal motive to be sworn in or to discharge the duties of said office."

No one may prevent them from performing the duties of their office, such as attending the meetings of the Senate or of any of its committees or subcommittees, or from expressing their opinions or casting their votes, without be-

ing criminally guilty of a violation of parliamentary immunity, a criminal offense punished by the Penal Code with *prisión mayor*.

"ART. 145. *Violation of parliamentary immunity.*—The penalty of *prisión mayor* shall be imposed upon any person who shall use force, intimidation, threats, or fraud to prevent any member of the National Assembly (Congress) from attending the meetings of the Assembly (Congress) or of any of its committees or subcommittees, constitutional commissions or committees or divisions thereof, from expressing his opinions or casting his vote; and the penalty of *prisión correccional* shall be imposed upon any public officer or employee who shall, while the Assembly (Congress) is in regular or special session, arrest or search any member thereof, except in case such member has committed a crime punishable under this Code by a penalty higher than *prisión mayor*." (Words in parenthesis supplied.)

From the foregoing, it is evident that respondents have the inexcusable duty of recognizing petitioners as legal members of the Senate, otherwise they may be liable to criminal prosecution for an offense defined and punished by the Penal Code with imprisonment ranging from 6 years to 12 years.

IX.—PETITIONERS' CREDENTIALS CONCLUSIVE AS TO THEIR RIGHT TO THEIR SEATS IN THE SENATE

It is a duty from which respondents can not legally escape. Otherwise they will invite the sword of Damocles of criminal posecution to be hanging on their heads. As the Supreme Court of Kansas said in *Re Gunn*, 19 L. R. A., 519:

"But, again, we have what is known as a 'standard work' on parliamentary or legislative practice. It is found in almost every public library, is examined and referred to by every legislative assembly and every congressional body, and its title is 'Cushing's law and Practice of Legislative Assemblies.' * * * In section 240 it is said: 'The principles of parliamentary law applicable to the question are perfectly simple and plain, founded in the very nature of things, established by the uniform practice and authority of parliament, confirmed by reason and analogy. These principles are as follows: First, that every person duly returned is a member, whether legally elected or not, until his election is set aside; second, that no person who is not duly returned is a member, although legally elected, until his election is established; third, that conflicting claimants, both in form legally returned (that would be where two persons had certificates), are neither of them entitled to be considered as members until the question between them has been settled; fourth, that those members who are duly returned, and they alone—the members whose rights are to be determined being excluded—constitute the judicial tribunal for the decision of all questions of this nature.' Upon this question of certificates, we also cite the contest in the United States Senate from Montana, which is the latest utterance of the highest legislative body in this land. In the report of the majority of the committee it is said: 'The majority of the committee are of the opinion that, if this body of persons had lawful and constitutional certificates of their election, that title is a good title

against all the world, governing their associates in that body, governing the senate, governing everybody who had a lawful duty to determine who are lawfully elected representatives, until there can be an adjudication by the House itself to the contrary; and that nobody can be heard to say, and that no authority can be permitted to inquire into or determine, the actual facts of the election as against that title.'” 51st Congress, 1st Session (21 Cong. Record, pt. 3, pp. 2906-2810).—p. 521.

The court also quoted from the American and English Encyclopedia, saying:

“The American and English Encyclopedia summarizes the law of the worth of a certificate of election as follows: ‘It is settled that when it is made the duty of certain officers to canvass the votes, and issue a certificate of election in favor of the successful candidate, a certificate of such officers, regular upon its face, is sufficient to entitle the person holding it to the possession of the office during an action to contest the right.’ Volume 6, p. 373; 33 Law. ed., 948; State *vs.* Buckland (23 Kan., 359).”

The court might well have added that Ruling Case Law wholly confirms its stand:

“ * * * * The certificate entitles the recipient to exercise the office until the regular constitutional authority shall determine who is legally elected officer, and it is the duty of the incumbent of an office at the expiration of his term to surrender it to one who has received a certificate of election and has qualified thereunder. If it is desired to contest the election or qualification of such person, this may be done in the manner prescribed by law for determining claims to an office. Disbursing officers, charged with the payment of salaries, have a right to rely on the apparent title, and treat the officer who is clothed with it as the officer *de jure*, without inquiring whether another has the better right. While a certificate of election may be superseded by a decree in proceedings to contest the election, it cannot be subjected to attack in a collateral proceeding in which the title may be in question; and if the time should pass within which such proceeding may be instituted the title may become absolute and indefeasible in default of any contest. Hence it has been said that the holder of a certificate of election who has duly qualified is *prima facie* entitled to the office when his term begins, as against everyone except a *de facto* officer in possession under color of authority. He is entitled to retain possession and to perform the duties of the office without interference until such certificate is set aside by some appropriate proceeding.”—22 R. C. L., 436, 437.

This Supreme Court laid down the same doctrine by stating the following:

“ * * * * As a matter of fact, certification by the proper provincial board of canvassers is sufficient to entitle a member-elect to a seat in the National Assembly and to render him eligible to any office in said body (No. 1, par. 1, Rules of the National Assembly, adopted December 6, 1936).

“Under the practice prevailing both in the English House of Commons and in the Congress of the United States, confirmation is neither necessary in order to entitle a member-elect to take his seat. The return of the proper election officers is sufficient, and the member-elect presenting such return begins to enjoy the privileges of a member from the time that he takes his oath of office (Laws of England,

vol. 12, pp. 331, 332; vol. 21, pp. 694, 695; U. S. C. A., Title 2, secs. 21, 25, 26). Confirmation is in order only in cases of contested elections where the decision is adverse to the claims of the protestant. In England, the judges' decision or report in controverted elections is certified to the Speaker of the House of Commons, and the House, upon being informed of such certificate or report by the Speaker, is required to enter the same upon the Journals, and to give such directions for confirming or altering the return, or for the issue of a writ for a new election, or for carrying into execution the determination as circumstances may require (31 and 32 Vict., c. 125, sec. 13). In the United States, it is believed, the order or decision of the particular house itself is generally regarded as sufficient, without any actual alteration or amendment of the return (Cushing, Law and Practice of Legislative Assemblies, 9th ed., sec. 166)." *Angara vs. Electoral Commission* (63 Phil., 139, 180, 181).

As a matter of fact, in the Gunn case, the Supreme Court of Kansas had occasion to comment on the exclusion of ten duly proclaimed members from the roll of the House, and unhesitatingly condemned it in these words:

"It seems that while 10 contestants are marked in the Dunsmore Journal as present, but not voting, 10 names on the certified roll are wholly omitted. Any rightful reason for such omission does not appear. We cannot perceive any valid reason for such omission, even if 10 certified members had their seats contracted. Every person duly returned to a house of representatives, and having a certificate, is a member thereof, whether elected or not, whether eligible or not, until his election is set aside. And this must be set aside by the House, not by the individual members before organization, not by any one member, not by any contestant, not by any mob. Before organization, a few members properly elected, meeting in caucus or otherwise, cannot pass upon the 'elections, returns, and qualifications of the members of the House to be thereafter organized.' If one member, before organization can object to any other member duly returned and having a certificate, then all members can be objected to, and there could be no one left to organize any house. In McCrary on Election (2d ed., s. 204) the practice is thus stated: 'Where two or more persons claim the same office, and where a judicial investigation is required to settle the contest upon the merits, it is often necessary to determine which of the claimants shall be permitted to qualify and to exercise the functions of the office pending such investigation. If the office were to remain vacant pending the contest, it might frequently happen that the greater part of the term would expire before it could be filled; and thus the interests of the people might suffer for the want of a public officer. Besides, if the mere institution of a contest were deemed sufficient to prevent the swearing in or the person holding the usual credentials, it is easy to see that very great and serious injustice might be done. If this were the rule, it would only be necessary for an evil-disposed person to contest the right of his successful rival, and to protract the contest as long as possible, in order to deprive the latter of his office for at least a part of the term; and this might be done by a contest having little or no merit on his side for it would be impossible to discover in advance of an investigation the absence of merit. And, again, if the party holding the ordinary credentials to an office could be kept out of the office by the mere institution of a contest, the organization of a legislative body—such, for example, as the House of Representatives of the United States—might be

altogether prevented by instituting contests against a majority of the members; or what is more to be apprehended, the relative strength of political parties in such body might be changed by instituting contest against members of one or the other of such parties. These considerations have made it necessary to adopt and to adhere to the rule that the person holding the ordinary credential shall be qualified and allowed to act pending a contest and until a decision can be had on the merits.

"Now, why should not this principle be followed? Why should not this rule, which is universal throughout the states of this Union, and which is accepted and adopted by Congress, be followed in the state of Kansas? It has history to sustain it. It has the wisdom of long years of legislative experience to sustain it. It has reason to sustain it. And let us here remark that in every state of this Union where, through political excitement or personal contests, a different rule has been adopted, disturbance, violence, and almost bloodshed have always occurred."—pp. 522-523.

X.—ELECTORAL CONTESTS ON LEGISLATIVE POSITIONS

Much reliance has been placed by respondents on the Rafols case in support of their authority to suspend the seating of petitioners through the Pendatun Resolution.

We agree that not enough emphasis may be placed on said case, although not as an isolated one but as the initial link of a chain of historical events handing with the leading and epoch-making, although not enough of the publicized, case of *Angara vs. Electoral Commission*, decided on July 15, 1936, which reversed the pusillanimous, vacillating, and self-contradictory majority position taken in *Alejandrino vs. Quezon*, decided on September 11, 1924.

A little piece of history will be helping.

In 1925, Nicolas A. Rafols was reelected as representative from one district of Cebu. The House of Representatives of the 7th Philippine Legislature suspended his seating. The resolution for suspension was passed after a bitter parliamentary debate between members of the majority belonging to the Nacionalista Party and the members of the minority belonging to the Democrata Party. The House was then presided over by Speaker Manuel A. Roxas, now President of the Philippines, and among those who with us opposed the resolution for suspension were Representative Jose Avelino from Samar, now President of the Senate, and the minority floor leader, Claro M. Recto, who later became President of the constitutional convention. Justice Briones, like ourselves, happened then to be also a member of the House of Representatives. The arbitrariness and injustice committed against Representative Rafols were bitterly resented and rankled deep in the hearts of the minority who felt they were despotically trampled upon by a bulldozing majority.

The Pro-Anti political struggle in 1934 resulted in new alignments. Former Democratas Avelino and Recto hap-

pened to align with the Anti majority, the same as Justice Hontiveros, who also became a Delegate to the constitutional convention; and former Nacionalistas Manuel A. Roxas and Manuel C. Briones happened to align with the Pro minority.

In 1934, the constitutional convention was presided over by Claro M. Recto, as President, Ruperto Montinola, as First Vice President, and Teodoro Sandico, as Second Vice President. All of them belonged to the Democrata Party when in 1925 injustice was committed against Representative Rafols. Recto and Sandico were aligned with the Anti majority and Montinola with the Pro minority.

Although the Pro delegates of the convention were only about one-fifth of all the members, some of them were elected to preside over important committees—Rafael Palma, on principles; Jose P. Laurel, on the bill of rights; Manuel C. Briones, on legislative power; and ourselves, on citizenship. By his leading and influential rôle in the drafting of the Constitution, Manuel A. Roxas was pointed out as the Hamilton of our convention.

With such men and with their background, the convention introduced the innovation of creating the Electoral Commission of the National Assembly, to which the power to judge upon the election, returns, and qualifications of legislators, formerly exercised by legislative bodies, was transferred. The innovation was introduced precisely with the purpose of avoiding the repetition of such abuses and injustices as those committed against Rafols, by lodging the judicial power of deciding electoral contests for legislative positions to where it should logically belong—to a judicial body, which is expected to do justice and not to serve partisan political interests without compunctions and scruples.

Although the initiative came from the minority Pros, it was wholeheartedly supported by the majority Anti leaders. The members of the constitutional convention, with the most prominent leaders thereof, were fully aware of how changeable the political fortunes of men are, and it was in the interest of everybody that the rights of the minority be equally protected as those of the majority.

Through Justice Laurel, a former member of the constitutional convention, this Supreme Court said:

"The members of the constitutional convention who framed our fundamental law were in their majority men mature in years and experience. To be sure, many of them were familiar with the history and political development of other countries of the world. When, therefore, they deemed it wise to create an Electoral Commission as a constitutional organ and invested it with the exclusive function of passing upon and determining the election, returns and qualifications of the members of the National Assembly, they must have

done so not only in the light of their own experience but also having in view the experience of other enlightened peoples of the world. The creation of the Electoral Commission was designed to remedy certain evils of which the framers of our Constitution were cognizant. Notwithstanding the vigorous opposition of some members of the convention to its creation, the plan, as hereinabove stated, as approved by that body by a vote of 98 against 58. All that can be said now is that, upon the approval of the Constitution, the creation of the Electoral Commission is the expression of the wisdom and 'ultimate justice of the people.' (Abraham Lincoln, First Inaugural Address, March 4, 1861.)

"From the deliberations of our constitutional convention it is evident that the purpose was to transfer in its totality all the powers previously exercised by the Legislature in matters pertaining to contested elections of its members, to an independent and impartial tribunal. It was not so much the knowledge and appreciation of contemporary constitutional precedents, however, as the long-felt need of determining legislative contests devoid of partisan considerations which prompted the people, acting through their delegates to the convention, to provide for this body known as the Electoral Commission. With this end in view, a composite body in which both the majority and minority parties are equally represented to off-set partisan influence in its deliberations was created, and further endowed with judicial temper by including in its membership three justices of the Supreme Court.

"The Electoral Commission is a constitutional creation, invested with the necessary authority in the performance and execution of the limited and specific function assigned to it by the Constitution.
* * *.

"The grant of power to the Electoral Commission to judge all contests relating to the election, returns and qualifications of members of the National Assembly, is intended to be as complete and unimpaired as if it had remained originally in the legislature. The express lodging of that power in the Electoral Commission is an implied denial of the exercise of that power by the National Assembly. And this is as effective a restriction upon the legislative power as an express prohibition in the Constitution (*Ex parte Lewis*, 45 Tex. Crim. Rep., 1; *State vs. Whisman*, 36 S. D., 260; L. R. A., 1917B, 1)." *Angara vs. Electoral Commission* (63 Phil., 139, 174-176.)

XI.—SEPARATION OF POWERS

There is much misunderstanding as to the real import, meaning, and scope of the much vaunted principle of separation of powers due to the confusion in many minds between two conceptions: one, naive and vulgar; and the other, constitutional and strictly juridical. The trouble lies in the fact that, for lack of a more appropriate term, the word *separation* has been used to convey a group of concepts and ideas, when the word only expresses just one of partial aspect of one of said concepts and ideas. Thus a misconception results by confounding a part with the whole or the whole with the part.

The vulgar notion of separation of powers appears to be simple, rudimentary, and clear-cut. As a consequence, the principle of separation of powers creates in the mind of the ignorant or uninitiated the images of the different depart-

ments of government as individual units, each one existing independently, all alone by itself, completely disconnected from the remaining all others. The picture is their mental panorama offers, in effect, the appearance of each department as a complete government by itself. Each governmental department appears to be a veritable state in the general set up of the Philippine state, like the autonomous kingdoms and princedoms of the maharajahs of India. Such undiscerning and rudimentary notion can not fit in the pattern framed by the Filipino people through their representatives in the constitutional convention. The true concept of the principle of separation of powers may not be obtained but in conjunction with the political structure set up by the Constitution and only in accordance with the specific provisions thereof.

The drafters of the Constitution were fully acquainted with the then prevailing confusions and misconceptions as to the meaning of the principle of separation of powers. One outstanding instance is shown in the self-contradicting, courageous decision in *Alejandrino vs. Quezon* (46 Phil., 83), where the majority deflected from the natural and logical consequences of the premises unanimously agreed upon by all the members of the court using as a subterfuge an erroneous, disrupting, and subversive interpretation and application of the principle of separation of powers, becoming since a fetish of a class of unanalytical constitutional doctrinaires, distressingly unmindful of its dangerous implications, eager to emulate, in proclaiming it as a legal dogma, the plangent exertions of housetop bawlers preaching the virtues of a new panacea.

Fully knowing the prevailing misconceptions regarding said principle, although there was an implicit agreement that it is one of those underlying principles of government ordered by the Constitution to be established, the delegates to the constitutional convention purposely avoided its inclusion in the Declaration of Principles inserted as Article II of the fundamental law. They even went to the extent of avoiding to mention it by the phrase it is designated.

XII.—CONSTITUTIONAL CONCEPTION—THE ONLY ONE ACCEPTABLE

The only acceptable conception of the principle of separation of powers within our democracy is the constitutional one. We must reject any idea of it as something existing by itself, independent of the Constitution and, as some misguided jurist would have it, even superior to the fundamental law of the land.

"The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the

government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. * * * The Constitution has provided for an elaborate system of checks and balances to secure coördination in the workings of the various departments of the government. For example, the Chief Executive under our Constitution is so far made a check on the legislative power that this assent is required in the enactment of laws. This, however, is subject to the further check that a bill may become a law notwithstanding the refusal of the President to approve it, by a vote of two-thirds or three-fourths, as the case may be, of the National Assembly. The President has also the right to convene the Assembly in special session whenever he chooses. On the other hand, the National Assembly operates as a check on the Executive in the sense that its consent through its Commission on Appointments is necessary in the appointment of certain officers; and the concurrence of a majority of all its members is essential to the conclusion of treaties. Furthermore, in its power to determine what courts other than the Supreme Court shall be established, to define their jurisdiction and to appropriate funds for their support, the National Assembly controls the judicial department to a certain extent. The Assembly also exercises the judicial power of trying impeachments. And the judiciary in turn, with the Supreme Court as the final arbiter, effectively checks the other departments in the exercise of its power to determine the law, and hence to declare executive and legislative acts void if violative of the Constitution." (Angara *vs.* Electoral Commission (63 Phil., 139, 156, 157.)

The framers of the Constitution had never intended to create or allow the existence of governmental departments as autonomous states within the republican state of the Philippines. The three departments mentioned in the Constitution were created, not as complete independent units, but as limbs and organs of the organic unit of the government ordained to be established. So each department is independent and separate from the others in the sense that it is an organ specifically entrusted with the performance of specific functions, not only for the sake of efficiency resulting from division of labor, but to avoid tyranny, despotism, and dictatorship which, as experience and history have taught, result from the concentration of government powers in one person or in an oligarchical group.

XIII.—FUNDAMENTAL IDEA OF UNITY

The idea of unity is fundamental in our Constitution.

The Filipino people ordained and promulgated the Constitution "in order to establish a government that shall embody their ideals, conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a régime of justice, liberty, and democracy" (Preamble of the Constitution). "The Philippines is a republic state. Sovereignty resides in the people and all government authority emanates from them" (section 1, Article II, Constitution). Under this principle we must view the

whole government as a unit, and all departments and other government organs, agencies and instrumentalities as parts of that unit in the same way as the head, the hands, and the heart are parts of a human body.

By examining the provisions of the Constitution, the vulgar notion of the principle of separation of powers can be shown to be wrong, as there is neither an office nor a department, created or allowed to be created under the Constitution, that may be considered as effectively separate from the others, as the misinformed people would have it. As a matter of fact, there is no government power vested exclusively in any authority, office, or government agency. Section 1 of Article VI vests the legislative power in a Congress of the Philippines, but this provision does not preclude the President of the Philippines and the Supreme Court from partaking in the exercise of legislative power. The President has the initiative in the making of appropriations which may not be increased by Congress except those pertaining to Congress itself and the judicial department, and the President may veto any bill enacted by Congress (sections 19 and 20, Article VI, of the Constitution). The Supreme Court may declare unconstitutional and, therefore, nullify a law enacted by Congress and approved by the President of the Philippines (sections 2 and 10, Article VIII, of the Constitution). The Supreme Court exercises, besides, legislative power in promulgating rules concerning pleading, practice, and procedure in all courts (section 13, Article VIII, of the Constitution).

The executive power is vested in a President of the Philippines (section 1, Article VII, Constitution of the Philippines), but the Senate and House of Representatives, through the Commission on Appointments, take part in the exercise of the executive power of appointment (section 12, Article VI, and section 10(3), Article VII, of the Constitution), and in the granting of amnesty and in making treaties (sections 10(6) and 10(7), Article VII, of the Constitution). The Supreme Court exercises executive power regarding the transfer of judges from their districts to another. (Section 7, Article VIII, of the Constitution.) Tribunals' power to order the execution of their decisions and mandates is of executive character.

The judicial power is vested in one Supreme Court and in such inferior courts as may be established by law (section 1, Article VIII, of the Constitution). But there are many instances wherein the President of the Philippines must administer justice, so it is required from him by the Constitution to swear to "do justice to every man" (section 7, Article VII, of the Constitution). And by impeachment proceedings, the House of Representatives and the Senate excrcise judicial function (Article IX, of the Constitution).

Their power to construe and apply their own rules and their disciplinary power to punish their own members for disorderly conduct are of judicial nature.

Furthermore, there are specific functions of government entrusted to agencies other than the three great departments of government, the legislative, the executive, and the judicial. The judicial function of judging contests as to election, returns, and qualifications of senators is entrusted to the Electoral Tribunal of the Senate; and that of judging contests as to election, returns, and qualifications of representatives, to the Electoral Tribunal of the House of Representatives (section 11, Article VI, of the Constitution). The executive function of auditing the government accounts is entrusted to a constitutional officer, the Auditor General (Article XI, of the Constitution), and the administrative function of supervising elections is entrusted to the Commission on Elections (Article X, of the Constitution).

To understand well the true meaning of the principle of separation of powers, it is necessary to remember and pay special attention to the fact that the idea of separation refers, not to departments, organs, or other government agencies, but to powers exercised. The things separated are not the subject of the powers, but the functions to be performed. It means division of functions, but not of officials or organs which will perform them. It is analogous to the economic principle of division of labor practised in a factory where multiple manufacturing processes are performed to produce a finished article.

XIV.—APPLICATION OF THE PRINCIPLE OF SEPARATION OF POWERS

In the discussion of the question how the principle of separation of powers must be applied, misunderstood ideas have been asserted as springboard to jump to rash and unfounded conclusions. Among such assertions is the one which would have the three great departments of government, not only co-equal in dignity, but, notwithstanding their admitted coördination, as actual sovereigns—as if within the sphere of the sovereignty of our people the existence of other sovereigns can be admitted—each one with full powers to destroy and trample upon the Constitution, with the victims absolutely incapable and powerless to obtain redress against the offense. Such an assertion would make of said departments as states within a state. The fundamental error of the assertion lies in the failure to consider the following principle of the Constitution:

"Sovereignty resides in the people and all government authority emanates from them." (Section 1, Article II.)

Each department of government is nothing but a mere agency by which the people exercise its supreme sover-

eignty. Within the framework of the Constitution, our government may be compared to a human being: the legislative department is the brain that formulates policies and rules through the laws it enacts; the executive department is the hand that executes such policies and rules; the judicial department is the conscience that declares what is wrong and what is right, and determines what acts are in consonance with or inimical to the constitutional unity as the very condition of life and survival.

The brain that defines policies and the hand that executes them may go astray and disregard, by their physical power, the infallible pronouncements and admonitions of conscience; but nothing can and should stop conscience in its great ethical mission as a condition indispensable to existence itself. By the same token, nothing can and should silence tribunals as the organs, in the government set up by the Constitution, of the collective conscience of the people. In the long trip of destiny, that collective conscience shall ever be the guiding star, unerring even in the gloomiest confusions.

Applying to the case at bar the principle of separation of powers in its true meaning, the logical result will be precisely the opposite of the position taken by respondents who, unwittingly, are insistently invoking it to challenge the power, authority, and jurisdiction of this Supreme Court to entertain the petition and to grant petitioners coercive relief.

From the facts of the case, it is evident that respondents encroached upon, invaded, and usurped the ancillary power to suspend petitioners in relation to the power to judge electoral contests concerning senators, a power which the Constitution specifically assigns to the Senate Electoral Tribunal, exclusive of all other departments, agencies, or organs of government. That power of suspension is accessory, adjective, complementary, and ancillary to the substantial power to judge said electoral contests. The accessory must follow the principal; the adjective, the substantive; the complementary, the complemented.

"It is a settled rule of construction that where a general power is conferred or duty enjoined, every particular power necessary for the exercise of the one or the performance of the other is also conferred (Cooley, Constitutional Limitations, eighth ed., vol. I, pp. 138, 139)." *Angara vs. Electoral Commission* (63 Phil., 139, 177.)

That power of suspension may, in the interest of reason and justice, be exercised by the Senate Electoral Tribunal in relation to an electoral contest, among other possible cases that can be surmised, where two or more allegedly elected senators are in possession of apparently valid credentials of having been proclaimed as duly elected. In

such a case, as the Constitution does not allow more than twenty-four senators to sit in the Senate and there is, in the meantime, no possibility of determining who among the contestants have been duly elected—all the claimants being in possession of incompatible, self-denying and self-destroying credentials—reason counsels that all of them be suspended by the Electoral Tribunal pending the presentation of the necessary evidence to allow one of them to take his seat in the Senate until the contest is finally decided.

The usurpation perpetrated by respondents is a flagrant violation of the principle of separation of powers, they having invaded a ground belonging exclusively to the Senate Electoral Tribunal.

XV.—THE SENATE WITHOUT POWER TO SUSPEND ITS MEMBERS

Respondents lack the power of suspension, not only as ancillary remedy in senatorial election contests, but even in the exercise of the Senate judicial power to punish its members for disorderly conduct. The majority and the minority of the Supreme Court in the case of *Alejandrino vs. Quezon* (46 Phil., 83), agreed unanimously with respect to said Senate judicial power. Justice Malcolm, speaking for the Court in said case, stated:

"As to whether the power to 'suspend' is then included in the power to 'punish,' a power granted to the two Houses of the Legislature by the Constitution, or in the power to 'remove,' a power granted to the Governor-General by the Constitution, it would appear that neither is the correct hypothesis. The Constitution has purposely withheld from the two Houses of the Legislature and the Governor-General alike the power to suspend an appointive member of the Legislature.

"It is noteworthy that the Congress of the United States has not in all its long history suspended a member. And the reason is obvious. Punishment by way of reprimand or fine vindicates the outraged dignity of the House without depriving the constituency of representation; expulsion, when permissible, likewise vindicates the honor of the legislative body while giving to the constituency an opportunity to elect anew; but suspension deprives the electoral district of representation without that district being afforded any means by which to fill the vacancy. By suspension, the seat remains filled but the occupant is silenced. Suspension for one year is equivalent to qualified expulsion or removal," p. 96.

And Justice Johnson, who dissented on another ground, explained the ruling in greater detail as follows:

"The power to punish for misbehavior was intended purely as a disciplinary measure. When a member of the Legislature is removed either by the Governor-General or by the Legislature, a vacancy exists, and the law gives the Governor-General the right to appoint, and the people of the district the right to fill the vacancy by election, so that the people may again, under either case, be represented. A 'suspension' of a member, however, does not create a vacancy, and the people of the district are without a representative and the Governor-General cannot appoint one and the people cannot elect one during the

period of suspension. They are without representation during that period. They are, for the period of suspension, taxed without representation. If a member, under the power to punish, can be suspended for one year, for the same reason he may be suspended for ten or more years, thus depriving the Governor-General of his right under the law, and the people of the district, of a representative, and without a remedy in the premises.

"If the power 'to punish for disorderly behavior' includes the power to suspend or to deprive a member of all his rights, and if the suspension is in effect a removal, then an appointed member may be removed, under the power to punish, by a mere majority, while the law requires a two-thirds majority to remove an elective member. In other words, if under the power to 'punish,' any member of the legislature, including an appointive member, may be in effect removed, then an elective member may be removed by a majority vote only, thus encroaching upon the power of the executive department of the government, as well as violating the powers conferred upon the Legislature, because the Legislature cannot remove an elective member except by two-thirds majority.

"It is strenuously argued by the respondents that the resolution depriving the petitioner 'of all his prerogatives, privileges, and emoluments for the period of one year' is not a removal from his office but a mere suspension. The resolution does not use the word 'suspend' but *does* use the word 'deprive.' It provides that the petitioner is 'deprived' of all his prerogatives, etc., for a period of one year. If that word means anything it means that all of the prerogatives, privileges, and emoluments of the petitioner and the citizens whom he represents have been taken from him and them. His prerogatives, privileges, and emoluments constitute his right to be a member of the Senate under his appointment, his right to represent the people of his district, and his right to exercise all the duties and to assume all the responsibilities pertaining to his office. His emoluments constitute his right to receive his salary and the benefits pertaining to his office as a senator. If a value can be placed upon his prerogatives, privileges, and emoluments, and if he has been deprived of them, then it must follow that they have been removed from him, or that he has been removed from them. At any rate the resolution has separated the petitioner and the people whom he represents and deprived them of all of their prerogatives, privileges, and emoluments for the period of one year; and, for all intents and purposes, he and the people whom he represents, have been deprived of their prerogatives, privileges, and emoluments, and in effect, has been removed from any participation in the legislative affairs of the government.

"A great many cases have been studied on the question of removal and suspension, and we are confident in the assertion that the power to punish does not include the power to remove or suspend. A suspension from an office or a deprivation of the rights of an officer of all his prerogatives, privileges, and emoluments, is in effect a deprivation or a removal from office for the time mentioned in the order of suspension. It has been held that a suspension from office for an indefinite time and lasting for a period of six months, lost its temporary character, ceased to be a suspension, and in effect became a removal from such office. It was held, in the case of *State vs. Chamber of Commerce*, that the suspension of a member was a qualified expulsion, and that whether it was called a suspension or expulsion or removal, it in effect disfranchised the person suspended. In the case of *Metsker vs. Nelly*, it was held that a *suspension or a deprivation* for either a definite or indefinite period is in effect a

removal. In the case of *Gregory vs. New York*, it was held that the power to remove an officer or punish him does not include the power to suspend him temporarily from his office. A mere suspension would not create a vacancy, and the anomalous and unfortunate condition would exist of an office—an officer—but no vacancy, and of no one whose right and duty it was to execute the office." Pp. 100-102.

XVI.—POWER OF JUDICIAL NATURE

The principle of separation of powers can not be invoked to deny the Supreme Court jurisdiction in this case, because to decide the question of validity or nullity of the Pendatun Resolution, of whether petitioners are illegally deprived of their constitutional rights and privileges as senators of the Philippines, of whether respondents must or must not be enjoined by injunction or prohibition from illegally and unconstitutionally trampling upon the constitutional and legal rights of petitioners, is a function judicial in nature and, not having been assigned by the Constitution to other department of government, is logically within the province of courts of justice, including the Supreme Court.

The power, authority, and jurisdiction to decide any question as to the allocation of powers by the Constitution are of judicial nature and belong to courts of justice. In denying that power to the Supreme Court, respondents only add insult to injury by maintaining that there is no remedy for any usurpation being committed in adopting the Pendatun Resolution.

"But in the main, the Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government. The overlapping and interlacing of functions and duties between the several departments, however, sometimes makes it hard to say just where the one leaves off and the other begins. In times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated. In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof.

"As any human production, our Constitution is of course lacking perfection and perfectibility, but as much as it was within the power of our people, acting through their delegates to so provide, that instrument which is the expression of their sovereignty however limited, has established a republican government intended to operate and function as a harmonious whole, under a system of checks and balances, and subject to specific limitations and restrictions provided in the said instrument. The Constitution sets forth in no uncertain language the restrictions and limitations upon governmental powers and agencies. If these restrictions and limitations are transcended it would be inconceivable if the Constitution had not provided for a mechanism by which to direct the course of government along constitutional channels, for then the distribution of powers would be mere verbiage, the bill of rights mere expressions of sentiment, and the principles of good government mere political apothegms. Certainly, the limitations and restrictions embodied in our Constitution are real

as they should be in any living constitution. In the United States where no express constitutional grant is found in their constitution, the possession of this moderating power of the courts, not to speak of its historical origin and development there, has been set at rest by popular acquiescence for a period of more than one and a half centuries. In our case, this moderating power is granted, if not expressly, by clear implication from section 2 of article VIII of our Constitution.

"The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed 'judicial supremacy' which properly is the power of judicial review under the Constitution. Even then, this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Narrowed as its function is in this manner, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government." *Angara vs. Electoral Commission* (63 Phil., 139, 157-159).

XVII.—SENATORIAL TERRORISM

There is much loose talk as to the inherent power of the Senate to adopt the unconstitutional Pendatun Resolution for the self-preservation of the Senate, for its dignity and decorum. We are afraid that, by the facts publicly known to everybody, such talks serve only to reveal sheer hypocrisy. There is absolutely no showing as to the undesirability of petitioners' presence in the Senate. There is absolutely no showing that they are guilty of any disorderly conduct or of any action by which they may be subject to criminal prosecution, or that by their conduct they have become unworthy to have a seat in Congress. On the other hand, there are three senators who are under indictment for the heinous crime of treason before the People's Court, not for acts committed before their election, but for acts committed while they were already holding office as such senators. Respondents have not taken any action looking toward the suspension of said three senators. Although we do not propose to criticize respond-

ents for this inaction, as the three senators indicted for treason must be presumed innocent unless and until they are finally convicted by the proper court, such inaction serves to emphasize the iniquitous discrimination committed against petitioners, who have not even been indicted before any court of justice for the slightest violation of law.

The Pendatun Resolution invokes the report of the Commission on Elections as to alleged electoral irregularities in four Central Luzon provinces; but there is absolutely nothing in the resolution to show that petitioners had anything to do with said irregularities, and respondents themselves, in the canvass of votes for President and Vice President, had counted as valid all the votes cast in said Central Luzon provinces and had accepted as good ones the votes they themselves obtained therein. In fact, one of them occupied the first place in one of said provinces. This self-contradicting attitude has absolutely no defense in the judgment of any decent person. To this we must add that the Pendatun Resolution, in fact, misquotes the report of the Commission on Elections in the sense that it tries to convey an impression contrary to said report by quoting parts thereof based on unverified and uncorroborated hearsay evidence, and ignoring its main conclusion in which it is stated that the alleged irregularities did not affect the orderly election in said provinces.

There is much talk as to the alleged terrorism prevailing in the provinces in question during election, but there is absolutely no reliable evidence as to such terrorism that can be found either in the report of the Commission on Elections or in the Pendatun Resolution. Even in the case that such terrorism really happened, there is no reason to make any pronouncement based on it without proper investigation by proper authorities, and in the present case the proper authority that must determine, if such terrorism did really take place and affect the election on April 23, 1946, concerning senators, is the Senate Electoral Tribunal. And until then there is no reason why respondents must themselves resort to senatorial terrorism in order to oppress, muzzle, and crush minority senators, such as petitioners. Congressional terrorism is no better than lawless terrorism. Because it is practised by despotic government officials does not make it holy and sacrosanct.

XVIII.—NOBODY IS ABOVE THE LAW

There are assertions to the effect that we may exercise jurisdiction against individual officers of the Senate, but not against the Senate or against respondents. We do not agree with such an unmanly attitude. We do not agree with the theory that the Supreme Court must exercise its

judicial power to give redress to the victims of a usurpation only when its decision is addressed to minor officers of government, but not when it is addressed to powerful ones. We will incur a grave dereliction of duty if we should refuse to grant the redress that justice demands only and because we have to reverse an illegal and unconstitutional act committed by a legislative chamber, or a group of its members, specially if the group forms the majority, or by Congress itself. To show that under the Constitution nobody is above the law, we have only to refer to its provision which recognizes in the Supreme Court the power to nullify and declare unconstitutional an act enacted by Congress and approved by the President of the Philippines. A law passed by Congress is enacted with the direct participation of the two great departments of our government, the legislative and the executive. Nevertheless, if the law enacted is unconstitutional, the Supreme Court has the power to declare it so and deny effect to the same.

"The question, whether an act, repugnant to the constitution, can become the law of the land, is a question deeply interesting to the United States; but, happily, not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles, supposed to have been long and well established, to decide it.

"That the people have an original right to establish, for their future government, such principles, as, in their opinion, shall most conduce to their own happiness is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it, to be frequently repeated. The principles, therefore, so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent.

"This original and supreme will organizes the government, and assigns to different departments their respective powers. It may either stop here, or establish certain limits not to be transcended by those departments.

"The government of the United States is of the latter description. The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.

"Between these alternatives there is no middle ground. The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.

"If the former part of the alternative be true, then a legislative act contrary to the constitution is not law; if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

"Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and, consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.

"This theory is essentially attached to a written constitution, and, is consequently, to be considered, by this court, as one of the fundamental principles of our society.

* * * * *

"It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.

"So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

"If, then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply.

"Those, then, who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.

"This doctrine would subvert the very foundation of all written constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be given to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure." *Manbury vs. Madison* (1 Cr., 137; 2 Law. ed., pp. 60, 73, 74).

"But we have found no better expression of the true principle on this subject than the language of Justice Hear, in the Supreme Court of Massachusetts reported in 14 Gray, 226, in the case of *Burnham vs. Morrissey*. That was a case in which the plaintiff was imprisoned under an order of the House of Representatives of the Massachusetts Legislature for refusing to answer certain questions as a witness, and to produce certain books and papers. The opinion, or statement rather, was concurred in by all the court, including the venerable Chief Justice Shaw;

"The House of Representatives (says the court) is not the final judge of its own power and privileges in cases in which the rights and liberties of the subject are concerned, but the legality of its action may be examined and determined by this court. That House is not the Legislature, but only a part of it, and is therefore subject in its action to the law in common with all other bodies, officers and tribunals within the Commonwealth. Especially is it competent and proper for this court to consider whether its proceedings are in conformity with the Constitution and laws, because living under a written Constitution, no branch or department of the government is supreme, and it is the province and duty of the judicial depart-

ment to determine in cases regularly brought before them, whether the powers of any branch of the government, and even those of the Legislature in the enactment of laws, have been exercised in conformity to the Constitution; and if they have not, to treat their acts as null and void. * * *

"In this statement of the law, and in the principles there laid down, we fully concur." *Kilbourn vs. Thompson* (26 Law. ed., 377, 390).

Professor Edward S. Corwin, in his book "The Twilight of the Supreme Court," says:

"The pivotal proposition was set up that between the *making* of law and its *construction* was an intrinsic difference of the most vital nature; and that since the latter function was demonstrably a daily concern of courts, it followed necessarily that the legislature might not perform it in a way to produce finally binding results.

"Applied to the Constitution, this reasoning automatically produces judicial review. As Marshall insists in *Marbury vs. Madison*, the Constitution, a solemn act of the people themselves, was made to be *preserved*, and no organ of government may alter its terms. But interpretation, which belongs to the courts exclusively and is 'their peculiar and proper province,' does not *change* the law, it *conserves* it. By the same token, judicial interpretation of the Constitution is vested with the authority of the Constitution itself." (P. 110.)

"A passage in Cicero's *De Legibus*, the substance of which was later recalled by Coke, describes the law as 'the silent magistrate' and the magistrate as 'the law speaking.' Despite the apparent implication of these words, the Roman Law would seem to have regarded interpretation as primarily an extension and continuation of the process of law-making, as the maxim '*cuius est sendere est interpretari*' appears to bear witness. Reciprocally, the official attitude of the common law has not always escaped skeptical comment. A yearbook of the fourteenth century records a dispute among the judges over whether they were enforcing *reason* or only their own *will*, and two hundred years later we find an Elizabethan bishop asserting flatly: 'Whoever hath an absolute authority to interpret any written or spoken laws, it is he who is truly the law-giver to all intents and purposes, and not the person who first wrote or spoke them.' Suppose the good bishop had known of the Constitution of the United States, a law first spoken in 1789 and subject 150 years later to the 'absolute authority' of the Supreme Court to interpret it!" (Pp. 112-113.)

"What gives the *coup de grace* to the idea that—in the words of Chief Justice Marshall—'courts are the mere instruments of the law and can will nothing,' is the simple fact that most so-called 'doubtful cases' could very evidently have been decided just the opposite way to which they were decided without the least infraction of the rules of logical discourse or the least attenuation of the principle of *stare decisis*." (P. 114.)

"In short, *decision is choice; the very circumstance which produces doubtful cases guarantees the Court what Justice Holmes has termed 'the sovereign prerogative of choice' in deciding them.* This circumstance may be described as a factual situation which forthwith divides, as it were, the acknowledged body of established law so far as it bears upon the said facts into two opposed—two antinomous—camps." (P. 115.)

"Should the Constitution be construed 'strictly' or 'liberally'? That depends logically on whether it came from the people at large or from state sovereignties. Then there is the antimony of 'inclusive' versus 'exclusive' construction—in *Marbury vs. Madison* Chief Justice Mar-

shall invoked the latter principle, in *McCulloch vs. Maryland* he invoked the former. Again there is the issue whether the Court's mandate to interpret the Constitution embraces the power and duty of adopting it to change circumstances. Marshall thought that it did, while Taney repudiated any such mission for the Court; and in the recent Minnesota Moratorium Case the Chief Justice takes as his point of departure Marshall's doctrine, while Justice Sutherland, dissenting, builds upon Taney's doctrine. Furthermore, there are those diverse attitudes of a shifting majority of the Bench which, though they may never have found clear-cut expression in antithetical principles of constitutional construction, have given rise none the less to conflicting courses of decision, the potential bases of future opposed arguments which either counsel or the Court may adopt without incurring professional reproach. *In brief, alternative principles of construction and alternative lines of precedent constantly vest the Court with a freedom virtually legislative in scope in choosing the values which it shall promote through its reading of the Constitution.*" (P. 117.)

"The concept of a 'government of laws' simmers down, therefore, under the Constitution to a power in the Supreme Court which is without statable limits to set the metes and bounds of political authority in both the nation and the states. But the dominating characteristic of judicial review, wide-ranging though it be, is that it is ordinarily a negative power only—a power of *refusal*. The Court can forbid somebody else to act but cannot, usually, act itself; in the words of Professor Powell, it 'can unmake the laws of Congress, but cannot fill the gap.'" (P. 122.)

"To summarize: From legal history emerge two conceptions of law—that of a code of intrinsic justice, not of human creation but discoverable by human reason, and that of a body of ordinances assertive of human will and owing its binding force thereto. The idea of a 'government of laws and not of men' originally predicated the sway of the former kind of law and a 'legislative power' which was merely a power to declare such law, and hence was indistinguishable in principle from 'judicial power.' But as we saw in the previous chapter, the very essence of the American conception of the separation of powers is its insistence upon the inherent distinction between law-making and law-interpreting, and its assignment of the latter to the judiciary, a notion which, when brought to bear upon the Constitution, yields judicial review. For all that, the idea that legislative power embraces an element of law-declaring power has never been entirely expelled from our inherited legal traditions, while, conversely, modern analysis of the interpretative function exercised by courts plainly discloses that it involves unavoidably an exercise of choice substantially legislative in character; and especially is this so as to the Supreme Court's interpretations of the national Constitution, on account of the wealth of alternative doctrines from which the Court may at any time approach its task of interpretation. In short, the meaning of 'a government of laws' in our constitutional law and theory is government subject to judicial disallowance." (Pp. 146, 147.)

XIX.—PARALLELISM WITH THE ANGARA CASE

No better precedent may be invoked to decide several important questions raised in this case than the decision rendered by this very Supreme Court in *Angara vs. Electoral Commission, supra*, which may be considered as an outstanding milestone in Philippine jurisprudence.

The facts and legal issues in said case are in exact parallel with the ones in the present controversy. Then, there was a conflict between two independent departments or organs of government, the National Assembly and the Electoral Tribunal. Now the conflict is between two equally independent departments or organs of government, the Senate and the Senate Electoral Tribunal. The differences between the contending parties consist in: (a) that while the former National Assembly constituted the whole legislative department, the present Senate is but a part of the legislative department; (b) that the National Assembly that adopted the resolution then in question and, finally, declared by this Supreme Court as unconstitutional, null, and void, acted as a body, with undisputable quorum and regularity; while the Pendatun Resolution was adopted by but 12 senators of the majority Liberal Party, when there was no quorum present in the Senate. There is also an accidental difference in the fact that, in the Angara case, the Electoral Commission was the respondent and the National Assembly was not a party, although 6 members thereof were also parties in the case, they constituting a majority of two-thirds of the Electoral Commission membership; while in the present case, the Senate Electoral Tribunal is not a party, and the respondents are the majority members of the Senate, which is but a branch of Congress. In both cases the legislative department upon which the legislative power was vested by the Constitution—the National Assembly in 1936 or Congress in 1946—is definitely not a party.

Another difference between the two cases is the fact that in the Angara case, petitioner sought to nullify a resolution of the Electoral Commission because it was in conflict with one previously adopted by the National Assembly. The Supreme Court, in denying the petition, nullified instead the resolution of the National Assembly as adopted without the powers vested in it by the Constitution. In the present case, petitioners pray for the annulment of the Pendatun Resolution which the respondents or the Senate could not and cannot adopt without transgressing the Constitution.

Many of the conclusions and pronouncements of the Supreme Court in the Angara case may appear as if written expressly to decide several of the very legal issues raised in the present case. This will readily appear if we should read "Senate" and "Senate Electoral Tribunal," respectively, in lieu of "National Assembly" and "Electoral Commission," in the following summarized conclusion in said case:

"(a) That the government established by the Constitution follows fundamentally the theory of separation of powers into the legislative, the executive and the judicial.

"(b) That the system of checks and balances and the overlapping of functions and duties often makes difficult the delimitation of the powers granted.

"(c) That in cases of conflict between the several departments and among the agencies thereof, the judiciary, with the Supreme Court as the final arbiter, is the only constitutional mechanism devised finally to resolve the conflict and allocate constitutional boundaries.

"(d) That judicial supremacy is but the power of judicial review in actual and appropriate cases and controversies, and is the power and duty to see that no one branch or agency of the government transcends the Constitution, which is the source of all authority.

"(e) That the Electoral Commission is an independent constitutional creation with specific powers and functions to execute and perform, closer for purposes of classification to the legislative than to any of the other two departments of the government.

"(f) That the Electoral Commission is the sole judge of all contests relating to the election, returns and qualifications of members of the National Assembly.

"(g) That under the organic law prevailing before the present Constitution went into effect, each house of the legislature was respectively the sole judge of the elections, returns, and qualifications of their elective members.

"(h) That the present Constitution has transferred all the powers previously exercised by the legislature with respect to contests relating to the election, returns and qualifications of its members, to the Electoral Commission.

"(i) That such transfer of power from the legislature to the Electoral Commission was full, clear and complete, and carried with it *ex necessitate rei* the implied power *inter alia* to prescribe the rules and regulations as to the time and manner of filing protests.

"(j) That the avowed purpose in creating the Electoral Commission was to have an independent constitutional organ pass upon all contests relating to the election, returns and qualifications of members of the National Assembly, devoid of partisan influence or consideration, which object would be frustrated if the National Assembly were to retain the power to prescribe rules and regulations regarding the manner of conducting said contests.

"(k) That section 4 of Article VI of the Constitution repealed not only section 18 of the Jones Law making each house of the Philippine Legislature respectively the sole judge of the elections, returns and qualifications of its elective members, but also section 478 of Act No. 3387 empowering each house to prescribe by resolution the time and manner of filing contests against the election of its members, the time and manner of notifying the adverse party, and bond or bonds, to be required, if any, and to fix the costs and expenses of contest.

"(l) That confirmation by the National Assembly of the election of any member, irrespective of whether his election is contested or not, is not essential before such member-elect may discharge the duties and enjoy the privileges of a member of the National Assembly.

"(m) That confirmation by the National Assembly of the election of any member against whom no protest had been filed prior to said confirmation, does not and cannot deprive the Electoral Commission of its incidental power to prescribe the time within which protests against the election of any member of the National Assembly should be filed." *Angara vs. Electoral Commission (supra)*.

Without the slightest ambiguity, in perspicuous and clear-cut language, the Supreme Court stated the real conflict, grave and transcendental, in said case as follows:

"Here is then presented an actual controversy involving as it does a conflict of a grave constitutional nature between the National Assembly on the one hand, and the Electoral Commission on the other." Angara *vs.* Electoral Commission (*supra*).

The Supreme Court then, in the full consciousness of the far-reaching importance of the pronouncement it had to make, with manly courage stated:

"From the very nature of the republican government established in our country in the light of American experience and of our own, upon the judicial department is thrown the solemn and inescapable obligation of interpreting the Constitution and defining constitutional boundaries. * * * Conflicting claims of authority under the fundamental law between departmental powers and agencies of the government are necessarily determined by the judiciary in justiciable and appropriate cases. Discarding the English type and other European types of constitutional government, the framers of our Constitution adopted the American type where the written constitution is interpreted and given effect by the judicial department. * * * the nature of the present controversy shows the necessity of a final constitutional arbiter to determine the conflict of authority between two agencies created by the Constitution. Were we to decline to take cognizance of the controversy, who will determine the conflict? And if the conflict were left undecided and undetermined, would not a void be thus created in our constitutional system which may in the long run prove destructive of the entire framework? To ask these questions is to answer them. *Natura vacuum abhorret*, so must we avoid exhaustion in our constitutional system. Upon principle, reason and authority, we are clearly of the opinion that upon the admitted facts of the present case, this court has jurisdiction over the Electoral Commission and the subject matter of the present controversy for the purpose of determining the character, scope and extent of the constitutional grant to the Electoral Commission as 'the sole judge of all contests relating to the election, returns and qualifications of the members of the National Assembly.'" Angara *vs.* Electoral Commission (*supra*).

Where the Supreme Court wrote "Electoral Commission" in the last preceding lines, we may also write as well "Senate," "House of Representatives," "Congress," "Senate Electoral Tribunal," "House Electoral Tribunal," or any other constitutional body.

The above pronouncements of the Supreme Court made in the ringing words penned by Justice Jose P. Laurel who, with President Roxas, Justice Briones, Justice Hon-tiveros, former Justices Romualdez and Recto, and several others, was among the leaders and most prominent figures in the constitutional convention, we believe will sound through the ages as the expression of permanent truth and undisputable wisdom. Since the words have been written, the question as to the Supreme Court's jurisdiction to take cognizance and decide controversies such as the present one and to grant redress for or against

parties like those included in this litigation, has been unmistakably and definitely settled in this jurisdiction.

XX.—THREE DIFFERENT EDITIONS OF A SENTENCE

Regret can not be repressed when, upon reading the majority opinion, one notices that, in the very first paragraph heading it, truth is unwittingly immolated by, as a counterpart of the Pendatun Resolution and without the benefit of any ritual, attributing to the Commission on Elections an assertion which in fact it did not make.

The Commission is represented to have fathered the statement that in the Provinces of Pampanga, Nueva Ecija, Bulacan and Tarlac, voting "did not reflect the true and free expression of the popular will."

This assertion is the third revised edition of a 3-line sentence appearing in the report of the Commission on Elections. For clearness, we will reproduce the three editions, the original one and the amended two:

First edition.—In the report of the Commission on Elections, the sentence reads as follows:

"*It is believed* that the election in the provinces aforesaid did not reflect the true and free expression of the popular will."

Second edition.—The drafter of the Pendatun Resolution, who appears to be ready to sacrifice truth if it is necessary to serve or bolster his interests and purposes, in reproducing said statement, without any compunction or scruple, changed the words "it is believed" to the words "This Commission believes" as follows:

"*This Commission believes* that the election in the provinces aforesaid did not reflect the true and free expression of the popular will."

Third edition.—In the majority opinion the idea of belief by third persons, contained in the report of the Commission, and the idea of belief by the Commission, attributed in the Pendatun Resolution, are eliminated and substituted by a positive statement by the Commission on Elections of a categorical and conclusive nature as follows:

"*The Commission on Elections * * * stated that * * * the voting in said region did not reflect the true and free expression of the popular will.*"

The discrepancy is emphasized by reading the following paragraph of the report of the Commission on Elections:

"Except for *alleged* suppression of the popular will in the Provinces of Pampanga, Tarlac, Bulacan and certain municipalities of Nueva Ecija wherein the voters were *allegedly* intimidated or coerced by the Hukbalahaps and other lawless elements to such an extent that the election in said provinces is considered a farce, not being the free expression of the popular will, *the elections throughout the country were carried on peacefully, honestly and in an orderly manner, as a result of which the respective representatives-elect for all the provinces throughout the country have been duly proclaimed by the various*

boards of provincial canvassers, and the Commission on Elections on May 23, 1946, also proclaimed those elected senators in accordance with section 11 of Commonwealth Act No. 725." (Italics supplied.)

From the foregoing, it is evident: (1) that the *alleged* suppression of the popular will in Pampanga, Tarlac, Bulacan, and certain municipalities of Nueva Ecija is mentioned by the Commission only as hearsay information that the Commission itself, contrary to the idea which the Pendatun Resolution or the majority opinion conveys, does not accept; (2) that to emphasize the Commission's refusal to accept the unverified information, it explicitly and conclusively manifested that "the elections throughout the country were carried on peacefully, honestly and in an orderly manner, as a result of which the respective representatives-elect for *all* the provinces throughout the country have been duly proclaimed elected by the various boards of provincial canvassers, and the Commission on Elections on May 23, 1946, also proclaimed those elected senators in accordance with section 11 of Commonwealth Act No. 725."

An abiding respect for truth compels us to point out the above glaring error of fact, which is just a fitting prelude and millieu to a long chain of errors of law spread over the opinion of the majority, resulting in conclusions that we are sure will fail to withstand the test of posterity.

XX-A.—UNJUSTIFIED AND RECKLESS PRONOUNCEMENTS

The error of reading in the report of the Commission on Elections assertions contrary to the ones appearing therein, induces the majority to make pronouncements which are necessarily groundless and unjustified, because premised on assertions not borne out by the truth.

Thus, in justifying the adoption of the Pendatun Resolution, the majority assert that "there are reasons to believe it was prompted by the dictates of ordinary caution, or of public policy" for "if, as reported by the corresponding constitutional agency" (the Commission on Elections), the elections held in the provinces of Pampanga, Bulacan, Tarlac, and Nueva Ecija "were not tainted with acts of violence and intimidation, that the result was not the legitimate expression of the voters' choice, the Senate made no grievous mistake in foreseeing the probability that, upon proof of such widespread lawlessness, the Electoral Tribunal would annul the returns in that region (*see Gardiner vs. Romulo*, 26 Phil., 521; Laurel, *Elections* [2nd Ed.] p. 448 *et seq.*), and declare herein petitioners not entitled to seats in the Senate."

Taking as point or departure the false assumption, that of attributing to the Commission on Elections a statement that, upon the very face of its report, is contrary to what

it made, the majority, not only attribute to the respondent majority of the Senate preternatural prophetic foresight taking for granted what the Senate Electoral Tribunal will do, but by making the pronouncement pretend to assume an improper rôle, the one by which, in effect, they pretend to direct and dictate to the Senate Electoral Tribunal what it should do in the pending electoral protests against petitioners, thus recklessly prejudicing the decision and disposal of a litigation pending in an independent tribunal with exclusive and final constitutional jurisdiction over said litigation.

On second thought, it seems that the majority try, with an apologetic attitude, to recede from the bold position of practically announcing what the Senate Electoral Tribunal, three members of which are Justices of the Supreme Court, will do, by beginning to state that "there should be no diversity of thought in a democratic country, at least, on the legal effects of the alleged rampant lawlessness, root and basis of the Pendatun Resolution," and ending with the following paragraph:

"However, it must be observed and emphasized, herein is no definite pronouncement that terrorism and violence *actually prevailed* in a district to such extent that the result was not the expression of the free will of the electorate. Such issue was not tendered in these proceedings. It hinges upon proof to be produced by protestants and protestees at the hearing of the respective contests."

We can not but regret that the endeavor is futile, because it can not subtract a scintilla from the boldness of the pronouncement emphasized with the following reiteration: "True, they may have no direct connection with the acts of intimidation; yet the votes may be annulled just the same, and if that happens, petitioners would not be among the sixteen senators elected."

Furthermore, the recession seems only to be apparent, used as a breathing respite, preparatory to another onslaught, no less unjustified, reckless, and out of reason.

Commenting on section 12 of Commonwealth Act No. 725, the majority restrict the provision to those candidates whose proclamation "is clear, unconditional, unclouded," adding—and here comes the aggressive thrust, prejudging petitioners on the basis of an unfounded surmise—"that such standard is not met by petitioners," because in the very document attesting to their election one member of the Commission on Elections demurred to the non-exclusion of the votes in Central Luzon, calling attention to the reported reign of terror and violence in that region, and virtually objecting to the certification of herein petitioners. To be sure, it was this beclouded condition of petitioners' credential (certificate of canvass) that partly prompted the

Senate to enact the precautionary measure herein complained of."

The attack does not stop here. It goes even further when, adducing as argument by analogy, an uncharitable example is used by comparing the situation imagined without any evidentiary foundation on fact by the dissenting minority of one in the Commission on Elections with the case if "the inclusion of petitioners' name in the Commission's certificate had been made at the point of a ganster's automatic," although adding that "the difference between such situation and the instant litigation is one of degree, broad and wide perhaps, * * *"

**XXI.—FUTILE EFFORT TO NEUTRALIZE THE SWEEPING EFFECT
OF THE DECISION IN ANGARA CASE**

In a futile effort to neutralize the sweeping effect of the decision of this court in the Angara case, the majority assume unfoundedly that in said case "no *legislative* body or *person* was a litigant before the court," and that "no directive was issued against a branch of the Legislature or *any member* thereof," the statements being premised on the error of fact and law that two-thirds of the members of the Electoral Commission were Assemblymen.

The fact that this court, in the Angara case, made declarations nullifying a resolution of the National Assembly is, according to the majority, "not decisive," when a better precedent can hardly be cited to show the practical exercise by the Supreme Court of its power to declare null and void any legislative resolution violative of the fundamental law. The majority recognize the power of this court to annul any unconstitutional legislative enactment, citing as authorities the epoch-making decision of Chief Justice Marshall in *Marbury vs. Madison*, and the following pronouncement of Justice Sutherland in the Minimum Wage Case (261 U. S., 544) :

"* * * The Constitution, by its own terms, is the supreme law of the land, emanating from the people, the repository of ultimate sovereignty under our form of government. A congressional statute, on the other hand, is the act of an agency of this sovereign authority, and if it conflicts with the Constitution, must fall; for that which is not supreme must yield to that which is. To hold it invalid (if it be invalid) is a plain exercise of the judicial power—that power vested in courts to enable them to administer justice according to law. From the authority to ascertain and determine the law in a given case there necessarily results, in case of conflict, the duty to declare and enforce the rule of the supreme law and reject that of an inferior act of legislation which, transcending the Constitution, is of no effect, and binding on no one. This is not the exercise of a substantive power to review and nullify acts of Congress, for no such substantive power exists. It is simply a necessary concomitant of the power to hear and dispose of a case or controversy properly before

the court, to the determination of which must be brought the test and measure of the law."

If the above reasoning is accepted by the majority with respect to a law enacted by two Houses of Congress and approved by the Chief Executive, there is absolutely no logic in denying its applicability to mere resolutions adopted by just a legislative branch, by the Senate alone, or by a group of senators acting collectively when the Senate is without quorum. The Supreme Court has the power to declare null and void such resolutions when they are in conflict with the Constitution, the same as the acts of the President as, according to the decision rendered by this court in *Planas vs. Gil* (37 Off. Gaz., 1221, 1232), cited with approval by the majority, the Supreme Court has the power of "making an enquiry into the validity or constitutionality of his (the Chief Executive's) acts when these are properly challenged in appropriate legal proceeding."

The majority, accepting the pronouncement in the *Angara* case that this Court could not decline to take cognizance of the controversy to determine the "character, scope and extent" of the respective constitutional spheres of action of the National Assembly and the Electoral Commission, maintain that in the present case, there is actually no antagonism between the Electoral Tribunal of the Senate and the Senate itself, "for it is not suggested that the former has adopted a rule contradicting the Pendatun Resolution." This assertion is based on the wrong idea that in order that antagonism may exist between two independent bodies, the attacks should be reciprocal and bilateral, and that it is not enough that one should rashly invade the province of another. The theory is parallel with the Japanese insistence in calling what they term "China Incident" because China was not able to invade in her turn the Japanese mainland of Honshu.

XXII.—FALLACIOUS ARGUMENT

It is argued by the majority that conceding that the petitioners' suspension is beyond the power of the respondents, the petition should be denied, because for this court to order the reinstatement of petitioners "would be to establish judicial predominance, and to upset the classic pattern of checks and balances wisely woven into our constitutional setup." The argument is utterly fallacious. There can be no more judicial predominance because the Supreme Court, without shirking its responsibility, should order that petitioners be reinstated in the full exercise of their constitutional rights, functions and prerogatives, of which they were deprived, in flagrant violation of the fundamental law, than there will be legislative predominance because Congress should refuse to be cowed into prevarica-

tion in the exercise of its legislative powers, or executive predominance because the President would not allow denial of his executive functions. And the pattern of checks and balances is not disrupted because the Supreme Court should proceed to perform its judicial duty by granting petitioners the legal redress to which they are entitled.

The indictment of volubility flung by Lord Bryce against the Supreme Court of the United States, resulting from "the political proclivities of the man who composed it," is quoted by the majority in order to support the rule of conduct that "adherence to established principle should *generally* be our guiding criterion." We underline *generally* because we prefer it to the word *invariably*, as, otherwise, we will expose ourselves to the English author's indictment, and with more reason if we should reverse the doctrines and principles enunciated in the Angara case in order not to displease a controlling majority in the Senate.

XXIII.—NOT DEMIGODS OUTSIDE THE REACH OF LAW

Should respondents disobey any order we may issue in this case, the majority ask, can we punish them for contempt? Of course. They are not demigods, duces, fuehrers, or Nippon emperor divinities, who are outside of the reach of law. They do not pretend that they are like the king of France who said *L'état c'est moi*.

But, why should we render respondents the disservice of entertaining the false hypothesis that they may disobey any order we may legally issue? Our people were not crazy enough to elect anarchists to our Senate.

XXIV.—BUILT ON PRECARIOUS FOUNDATION

The majority insist, notwithstanding, in arguing that if we should punish respondents for contempt because they should have disobeyed an order of ours, we would be destroying the independence and equal importance of legislative bodies under the Constitution. We would never imagine that the independence and equal importance of legislative bodies, under the Constitution, should be precariously built upon the unstable and shifting quagmire of immoral immunity to punishment for contempt, an offense punishable under all modern systems of criminal law.

Dogmatizing *ex cathedra*, the majority preached that we must "disabuse our minds from the notion that the judiciary is the repository of remedies for all political and social ills." Shooting in the dark at fantastic hobgoblins, insufflated with extraterrestrial life by supercreative imagination, might be an amusing sport, but is misleading in juridical controversy. No one has ever entertained the false and laughable notion that the judiciary may afford remedies "for all political and social ills." No one, unless

he be a paranoiac megalomaniac, may pretend to be the happy possessor of any political or social panacea. The argument is irrelevant because, in this case, we are dealing with a constitutional wrong which, under the fundamental law, can and must be redressed by the judiciary.

XXV.—FLAGRANT INCONSISTENCY

A citizen, deprived of liberty by a resolution to incarcerate him for years, illegally or unconstitutionally adopted by a legislative chamber, according to the majority, may not be denied relief by the courts and "may successfully apply for habeas corpus, alleging the nullity of the resolution and claiming for release," invoking as authorities Lopez *vs.* De los Reyes (55 Phil., 170) and Kilbourn *vs.* Thompson (103 U. S.). The reason is because the resolution is beyond the bounds of the legislative power, is a usurpation of functions belonging to courts, is an infringement of the Constitution, which is precisely the case of the Pendatun Resolution. But the majority would then have only as defendant the officer or person holding the victimized citizen in custody, which officer or person might be a senator or a group of senators.

The majority's inconsistency can not be hidden.

XXVI.—ELECTION CONTESTS—WRONG DEFINITION

The majority maintain that not *all the powers* of the House or Senate as "the sole judge of the election, returns, and qualifications of the members" thereof were transferred to the Electoral Commission, but only "all contests" relating to said election, returns, and qualifications. But the use of the words "all contests" in the Constitution does not affect or limit the transfer of *all powers* as "the sole judge of the election, returns, and qualifications" of the legislative members, because these *all powers* have always been, from the very beginning, circumscribed by the word "contests." The very words "the sole judge" imply necessarily contests, because if there is no contest, there is nothing to be judged.

The majority adhere to the following quotation: "As used in the constitutional provision, 'election contests' relates only to statutory contests in which the contestants seek not only to oust the intruder but also to have himself inducted into the office." (Laurel on Elections, 2nd ed., p. 250; 20 C. J., 58.) The assertion is wrong because there are election contests in which the contestants do not seek to be inducted into office, as when the contestants do not pretend to have won in the election and, admitting that the protestee obtained the majority votes, should, however, be ousted because he is unqualified.

The example of a man, disqualified for having served a long term of imprisonment, elected to either House of Con-

gress, is a good one not in support of the majority's theory that the House may, upon its own authority, investigate and exclude the disqualified person, but to show that the election may be contested before the corresponding Electoral Tribunal in a proper contest, without the protestant seeking to be himself seated.

XXVII.—UNCONSTITUTIONAL THEORY

The majority's theory that an election contest does not ensue when a member of the House raises a question as to the qualification of another because the former does not seek to be substituted for the latter, is based on the wrong definition of an election contest, the one limiting it to cases wherein protestants seek also to have themselves inducted into the contested office. Having for its basis a wrong premise, the theory can not be correct. The election contests mentioned in section 11 of Article VI of the Constitution include contests "relating to qualifications" of the respective members of the Senate and of the House of Representatives. To maintain that either House may investigate and thereafter exclude a disqualified member, is to maintain a constitutional heresy. An insistent effort to justify and approve an action that violates elemental standards of law and justice, such as the Pendatun Resolution, may often lead one to advancing unwittingly the most unexpected theories.

Invoking as authority the erroneous statement made by one of the attorneys for petitioners during the oral argument to the effect that the power to defer the oathtaking until the contest is adjudicated does not belong to the corresponding Electoral Tribunals, the majority gleefully jumps to the conclusion that "then it must be held that the House or Senate still retains such authority, whether we believe that such power (to delay induction) stemmed from the privilege of either House to be the judge of the election, returns and qualifications of the members thereof, or whether we hold it to be inherent to every legislative body as a measure of self-preservation."

Thus we see that the majority seem reluctant to accept the new constitutional setup by the creation of the Electoral Commission, later substituted by the Electoral Tribunals. They would rather stick to the old order of things when the majority of the Senate and of the House of Representatives before the Commonwealth were the absolute dictators of the election, returns and qualifications of the members of the respective legislative chambers, when they boldly assert that either House has "the privilege to be the judge of the election, returns and qualifications of the members thereof."

XXVIII.—THE CHARACTER AND PHYSIognomy OF THE
CONSTITUTION

The discussions as to the character of the legislative power vested in Congress gives way to a confusion of ideas due mainly to lack of discrimination between preconceived constitutional ideas, ingrained in the mind during university training, and the actual provisions of the Constitution of the Philippines, which enjoy outstanding and substantial advantages over older ones, because the delegates to our constitutional convention embodied in it new precepts and principles based on the lessons of one century and a half experience of American and European countries in constitutional government and four decades of Philippine constitutional history and the last juridical and ideological discoveries.

Whether the Constitution of the United States is only a grant or delegation of legislative powers to the federal government and the American state Constitutions are mere limitations of plenary powers of legislation, have nothing to do with the true character and physiognomy of our own Constitution which we must examine, not on the mirror of other constitutions, but on the face of its own concepts, precepts and provisions, and there we will see at once that our Constitution is both a grant and a limitation of powers of government decreed by our people, on whom sovereignty resides and from whom all government authority emanates. (Section 1, Article II, of the Constitution.) The sovereign people is the repository of all powers of government, in fact, also political and social powers. From them emanate, not only all government authority, but the plenary and unlimited power of society which is the foundation of government. Social order is established and maintained by the will of the people. The people is the absolute master of his own destiny. The people is the holder of the universality and residuum of all human powers. This being a natural conviction of humanity since time immemorial although not always articulate and vocal, to justify the absolutism of kings and emperors, it had been necessary to create the fiction of the divine genesis of their authority, imposed on the ignorance and religious credulity of superstitious masses, so much so that in certain epochs of history the positions of high priest and king were merged in the same individual. And those who would attach to a high officer or group of high officers of government, no matter in what department, any kind of monarchical or oligarchical absolutism, unlimited because placed above the law and not controllable by the provisions of the Constitution or any agency existing under its authority, are only

trying to perpetuate the worn-out tradition of the divine origin of the despotic rulers of the past.

To our mind, no power of government may be exercised by any branch, agency or officer thereof unless expressly or implicitly granted by the people through the Constitution. Subject to the limitations provided therein and in accordance with express provisions, the residuum of legislative, executive and judicial powers, respectively, are vested in Congress, the President, and the Supreme Court. It is wrong to maintain that any legislative power is vested exclusively in the Senate. The legislative power is vested in Congress, composed of the Senate and the House of Representatives, and not in any of its branches alone.

XXIX.—RIZALIAN ADMONITION ON TOLERANCE

Although there is absolutely nothing in the report of the Commission on Elections or in the Pendatun Resolution itself which imputes upon petitioners any act of disorderly behavior, it not appearing that they have anything to do with alleged irregularities and terrorism in the four provinces of Central Luzon, yet had the Senate elected to deprive petitioners of their seat in the Senate under the power to punish and expel a member for disorderly behavior provided in section 10 (3) of Article VI of the Constitution, and the Senate adopted the Pendatun Resolution in pursuance thereof, the majority of this court would still dismiss the petition. It appearing that not two-thirds of all the members of the Senate concurred or could concur in the adoption of the Pendatun Resolution and, therefore, under the constitutional provision invoked, the deprivation of petitioners of their seat in the Senate would appear as a flagrant transgression of the fundamental law, the majority of this court would still shield respondents with the palladium of judicial *noli me tangere*. Respondents must be very extraordinary beings to enjoy such an immunity from even the most shocking and tyrannical violation of the Constitution.

The majority would counsel prudence and comity and admonish to heed the off-limits sign at the Congressional hall, firm in the belief that "if a political fraud has been accomplished, as petitioners aver, the sovereign people, ultimately the offended party, will render the fitting verdict—at the polling precinct."

We are reluctant to wash our hands so easily. We can not remain comfortably seated in the highest tribunal of the land nor reconcile with our conscience by abstaining to give the relief we are duty bound to give to the victims of a political fraud which constitutes a wanton trampling down of the rights and privileges guaranteed by the Constitution. Let us not so easily forget the Rizalian admoni-

tion: "Sufferance is not always a virtue; it is a crime when it encourages tyrannies." Let us not disguise such kind of resignation under the inoffensive name of judicial prudence. Burke said: "There is also a false, reptile prudence, the result not of caution, but of fear." Fear, as favor, should not have place in judicial vocabulary.

XXX.—CONSTITUTIONALISM

The present nuclear physics is a far cry from the more than twenty-five centuries old theory enunciated by Democritus in the following words: "By convention sweet is sweet, by convention bitter is bitter, by convention hot is hot, by convention cold is cold, by convention color is color. But in reality there are atoms and the void. That is, the objects of sense are supposed to be real and it is customary to regard them as such, but in truth they are not. Only the atoms and the void are real."

The heated controversy between Ptolemy and Copernicus, the discoveries of Galileo and Newton, are just small incidents in the perennial struggle in which man is engaged to be, through science, fully acquainted with the truth about our universe. It takes 1,600 years for one-half of a gram of radium to disintegrate, and it takes one second for light to travel 186,360 miles; formerly matter and energy were essentially different things, but now solid matter is but concentrated energy, and energy has weight; it is not yet answered whether light is wave or a shower of photons, but it is known that it can be weighed. The theory of relativity opened new vistas in the panorama of science, but new riddles meet man in the great adventure to the unknown. Albert Einstein said:

"Yet new, still more difficult problems arise which have not been definitely settled as yet. We shall mention only some of these unsolved problems. Science is not and will never be a closed book. Every important advance brings new questions. Every development reveals, in the long run, new and deeper difficulties." (*The Evolution of Physics*, p. 308.)

All theories which, in their day, served useful scientific purposes, had to give way to others giving better explanations of physical phenomena. The prevailing theories may not resist the onslaught of new intellectual discoveries, but because they may eventually be discarded themselves is no reason to dispense with them when, in the meantime, they are the only ones that can satisfy reason. Otherwise, science will be crippled. Paralysis will keep her from new advances.

By the same token, in the history of law, man had to stick in each epoch to the known as the best of legal institutions. In the millennia of human life no more wonderful legal institution was devised by man than constitutionalism, the

evolution of which is one of the most inspiring chapters of history. A mere religious concept, giving voice to moral law, in Israel, a philosophical concept, merely normative, in Greece, it was in republican Rome where it took a definite legal and political force as the basis of *jurisdictio* as distinguished from *gubernaculum*, the reason of the law as opposed to the power of government. In England for the common law to prevail over the prerogative of the crown it took several hundred years of bitter struggle. But fate had it that in America is where the evolution of constitutionalism had to reach its highest accomplishment. It became the basis of the government of the United States from its very inception. Now constitutionalism for the world is envisaged as the only hope of humanity to attain the goal that will insure juridical order for the world, so that men's inventions, including those ominous on nuclear energy, may be placed under adequate social control.

The hope of the Republic of the Philippines lies also on constitutionalism. Not the one that would merely offer lip service to the Constitution, but that which would make of that document one of the living tissues of our body politic, absolutely indispensable to its own existence.

XXXI.—THE MCST VITAL ISSUE

The validity of the Constitution is the most vital issue involved in this case. If no one must be allowed to be above the law, with greater reason no one should be allowed to ignore or to trample upon the provisions and mandates of the fundamental law, which at all times must be held sacred by all persons living under the pale of the Republic of the Philippines, and not rocked of as an insignificant pushpin to toy with.

Burning with the thirst of immortality, shepherd Eros-tratus burned the temple of Ephesus to gain a berth in history. Let us not make of the Constitution of the Philippines another temple of Ephesus. It is much better to be buried in the dust of eternal oblivion than to permanently live in the memory of future generations as guilty of arson, as rivals of the barbaric hordes who destroyed the great works of art of Greece and Rome, or the contemporary vandals who destroyed without any compunction churches and schools, treasures of noble human institutions, or other works wherein the loftiest ideals and aspirations of men have blossomed with imperishable grandeur and beauty. Let us spare the Constitution from the deleterious effects of our prejudices and from the ravages of blind passions. Let us keep it as an undying beacon of hope, the indestructible foundation of our national existence, the inexpugnable citadel of the rights and liberties of our people, the eternal rock upon

which the Republic of the Philippines shall forever subsist with dignity.

The pamphlet in which it is printed may wizen and shrivel, its paper rived into shreds, the shreds pulverized into dust and ashes, and these reduced into infinitesimal atoms which will finally scatter in the wide universe, to form new substances. But the juridical sense of our people, crystallized in that pamphlet and permeating that paper, embodied in the great document, like the mythological phoenix of Arabia, undergoing the five hundred years cycle of resurrection, shall again and again rise in youthful freshness from the scattered ashes and atoms, the undying symbol of the spirit of the law, the flaming banner of justice, the magnificent expression of the undaunted will-power to live.

The petition must be granted, and the preliminary injunction of May 29, 1946, must be reissued and made perpetual.

BRIONES, M., disidente:

Después de las elecciones generales de 23 de abril, 1946, en que fueron elegidos el Presidente y Vice Presidente de Filipinas y los miembros del Congreso, el Senado y la Cámara de Representantes inauguraron su período de sesiones reuniéndose por primera vez el 25 de mayo. Uno de los primeros documentos que se leyeron en el Senado fué la proclama expedida por la Comisión sobre Elecciones cuyo texto íntegro se transcribe a continuación:

CERTIFICATE OF CANVASS BY THE COMMISSION ON ELECTIONS OF RETURNS OF VOTES FOR THE OFFICE OF SENATOR AND PROCLAMATION OF THE CANDIDATES ELECTED IN THE ELECTION HELD ON APRIL 23, 1946.

We, the undersigned, constituting the Commission on Elections, do hereby certify that, pursuant to the provisions of section 11 of Commonwealth Act No. 725, we have made the canvass of the votes cast in the Philippines for the office of Senator in accordance with the statements submitted by the Provincial Board of Canvassers of the different provinces and the City Board of Canvassers of Manila and that the result thereof shows the following sixteen (16) registered candidates to have received the highest number of votes:

Names of candidates	Votes received
1. Vicente J. Francisco	735,671
2. Vicente Sotto	717,225
3. Jose Avelino	708,420
4. Melecio Arranz	666,700
5. Ramon Torres	640,477
6. Tomas Confesor	627,354
7. Mariano Jesus Cuenco	623,650
8. Carlos P. Garcia	617,542
9. Olegario Clarin	611,227
10. Alejo Mabanag	608,902
11. Enrique B. Magalona	591,796
12. Tomas Cabili	589,762
13. Jose O. Vera	588,993

14. Ramon Diokno	583,598
15. Jose E. Romero	563,816
16. Salipada Pendatun	557,156

In view of the above result, we hereby proclaim that the above-named sixteen (16) registered candidates are the duly elected Senators in the election held on April 23, 1946.

We further certify that Vicente J. Francisco, Vicente Sotto, Jose Avelino, Melecio Arranz, Ramon Torres, Tomas Confesor, Mariano Jesus Cuenco and Carlos P. Garcia received the first eight (8) highest number of votes, and that Olegario Clarin, Alejo Mabanag, Enrique B. Magalona, Tomas Cabili, Jose O. Vera, Ramon Diokno, Jose E. Romero and Salipada Pendatun received the next eight (8) highest number of votes.

We further certify that the attached statement of votes shows the number of votes polled by each candidate for the Office of Senator in the Philippines by provinces.

In witness whereof, we have signed these presents in the City of Manila, this 23rd day of May, 1946.

(Sgd.) JOSE LOPEZ VITO
Chairman

(Sgd.) FRANCISCO ENAGE
Member

I concur in *toto*, except as regards the proclamation of the 16 Senators-elect, on the basis of the canvassing of all the votes cast in their favor, without excluding those of Central Luzon. (Separate opinion prepared.

(Sgd.) VICENTE DE VERA
Member

Acto seguido procedióse a la elección del Presidente del Senado saliendo elegido como tal el candidato del partido de la mayoría Hon. José A. Avelino que obtuvo 10 votos contra el candidato del partido de la minoría Hon. José O. Vera que obtuvo 8. Tanto el Sr. Vera como sus correncientes Sres. Diokno y Romero tomaron parte en la votación.

Elegido el Presidente se iba a proceder a la toma del juramento colectivo de los Senadores electos, pero en esto el Senador Hon. Salipada Pendatun presentó para su aprobación un proyecto de resolución cuyo texto también se transcribe íntegro a continuación:

"WHEREAS, the Commission on Elections, charged under the Constitution with the duty of insuring free, orderly, and honest elections, in the Philippines, reported to the President of the Philippines on May 23, 1946, that

"On election day, altho no acts of violence were officially reported to this Commission in connection with the elections, we were advised by our representative in Nueva Ecija that ballot boxes were stolen by armed bands in the barrios of the municipalities of Bongabon, Gapan, Sta. Rosa and Guimba. These incidents are still under investigation by the Military Police Command. After the election we cannot fail to notice the reports published in the newspapers on the attacks that have been made by armed bands upon persons or groups of persons who were

known to have voted for candidates other than the candidates of those armed elements. Even the report submitted to this Commission by the Provost Marshal General on May 20, 1946, * * * contains a recital of incidents of terrorism that occurred in the four provinces of Central Luzon herein above mentioned which disturbed or affected the national election in an undesirable manner. Reports also reached this Commission to the effect that in the provinces of Bulacan, Pampanga, Tarlac and Nueva Ecija, the secrecy of the ballot was actually violated; that armed bands saw to it that their candidates were voted for; and that the great majority of the voters, thus coerced or intimidated, suffered from a paralysis of judgment in the matter of exercising the right of suffrage. Considering all those acts of terrorism, violence and intimidation in connection with elections which are more or less general in the provinces of Pampanga, Tarlac, Bulacan and Nueva Ecija, this Commission believes that the election in the provinces aforesaid did not reflect the true and free expression of the popular will. It should be stated, however, that the Commission is without jurisdiction, to determine whether or not the votes cast in the said provinces which, according to these reports have been cast under the influence of threats or violence, are valid or invalid. Suffice it to state that in accordance with the provision of Article 1, section 2, of the Constitution. "The Commission on Elections shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law. It shall decide—save those involving the right to vote—all administrative questions, affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and of other election officials * * *" and that the question of whether or not a vote has been cast legally or illegally is not for this Commission to determine. The matter is therefore being brought to the attention of the President and Congress of the Philippines for such action as may be deemed proper pursuant to the requirements of the Constitution that this Commission submit after every election a report to the said offices on the manner the election was conducted."

"WHEREAS, the minority report of the Hon. Vicente de Vera, member of the Commission on Elections, says among other things, that "we know that as a result of this chaotic condition, many residents of the four provinces have voluntarily banished themselves from their home towns in order not to be subjected to the prevailing oppression and to avoid being victimized or losing their lives;" and that after the election dead bodies had been found with notes attached to their necks, reading: "Bumoto kami kay Roxas" (We voted for Roxas);

"WHEREAS, the same Judge De Vera says in his minority report that in the four provinces of Pampanga, Tarlac, Bulacan and Nueva Ecija, the worst terrorism reigned during and after the election, and that if the elections held in the aforesaid provinces were annulled as demanded by the circumstances mentioned in the report of the Commission, Jose O. Vera, Ramon Diokno, and Jose Romero, would not and could not have been declared elected;

"WHEREAS, in his report to the Provost Marshal, Col. Amando Dumlaao, Assistant Chief of Staff, G-2, attached to the report of the Commission on Elections, states among other things, that 'all the members of the Church of Christ (Iglesia ni Cristo) were intimidated and coerced, some kidnapped and murdered' by the HUKBALAHAPS 'because they had expressed their opinion that they were going to

vote for President-elect Manuel A. Roxas'; that because of terrorism and coercion 'a great many barrio people have evacuated their respective places and signified their intention not to vote'; and that ballot boxes were taken away from barrios San Miguel, Pasong Isip, Pakap, Guimba and Galvan, and that in some instances election inspectors were kidnapped;

"WHEREAS, the terrorism resorted to by the lawless elements in the four provinces mentioned above in order to insure the election of the candidates of the Conservative Wing of the Nationalista Party is of public knowledge and that such terrorism continues to this day; that before the elections Jose O. Vera himself declared as campaign manager of the Osmeña faction that he was sorry if Presidential Candidate Manuel A. Roxas could not campaign in Huk provinces because his life would be endangered; and that because of the constant murders of his candidates and leaders, Presidential Candidate Roxas found it necessary to appeal to American High Commissioner Paul V. McNutt for protection, which appeal American High Commissioner personally referred to President Sergio Osmeña for appropriate action, and the President in turn ordered the Secretary of the Interior to afford the necessary protection, thus impliedly admitting the existence and reign of such terrorism;

"WHEREAS, the Philippines, a Republic state, embracing the principles of democracy, must condemn all acts that seek to defeat the popular will;

"WHEREAS, it is essential in order to maintain alive the respect for democratic institutions among our people, that no man or group of men be permitted to profit from the results of an election held under coercion, in violation of law, and contrary to the principle of freedom of choice which should underlie all elections under the Constitution;

"WHEREAS, protests against the election of Jose O. Vera, Ramon Diokno and Jose Romero, have been filed with the Electoral Tribunal of the Senate of the Philippines on the basis of the findings of the Commission on Elections above quoted;

"Now, THEREFORE, be it resolved by the Senate of the Philippines in session assembled, as it hereby resolves, to defer the administration of oath and the sitting of Jose O. Vera, Ramon Diokno and Jose Romero, pending the hearing and decision on the protests lodged against their elections, wherein the terrorism averred in the report of the Commission on Elections and in the report of the Provost Marshal constitute the ground of said protests and will therefore be the subject of investigation and determination."

Parece que cuando se puso a debate la resolución arriba transcrita, el Senado acordó unánimemente transferir la discusión para la sesión del lunes siguiente, 27 de mayo. Ya se estaba discutiendo otro asunto cuando surgió un acalorado incidente en virtud del cual los Senadores de la minoría salieron todos del salón de sesiones, quedándose allí solamente el Presidente Avelino con sus once (11) compañeros de la mayoría. Se alega que en esta ocasión, ausentes los Senadores minoritarios y sin el necesario *quorum* legal para poder seguir despachando asuntos, los Senadores de la mayoría, revocando el acuerdo anterior de transferencia, decidieron considerar y aprobar la resolución sin más debate.

Tales son, a grandes rasgos, los hechos que han dado lugar a la demanda que directa y originariamente plantean

ante este Tribunal Supremo los recurrentes José O. Vera, Ramón Diokno y José E. Romero, y cuya parte petitoria es como sigue:

"POR LO TANTO, los recurrentes respetuosamente piden a este Honorable Tribunal y a cualquier Magistrado del mismo, tenga a bien expedir un interdicto prohibitario preliminar dirigido a los recurridos, sus funcionarios, empleados, agentes y demás personas que obran en su ayuda, ordenándoles que hasta nueva orden del Tribunal, desistan y se abstengan de poner en ejecución la resolución arriba mencionada, y de impedir a los recurrentes continuen en sus asientos en el Senado y ejerzan libremente sus funciones y derechos como senadores de Filipinas, deshaciendo todo lo hecho en contrario hasta esta fecha; que acorte los términos de contestación; que una vez contestada esta demanda, designe un Comisionado para recibir las pruebas, con instrucciones de que lo haga sin dilaciones, y que, previa la vista correspondiente, dicte sentencia declarando enteramente nula y de ningún valor la citada resolución, y prohibiendo consecuentemente a los recurridos y a cada uno de ellos a impedir a los recurrentes a continuar en sus asientos en el Senado de Filipinas y a ejercer libremente sus cargos como senadores, y prohibiéndoles igualmente a realizar cualquier otro procedimiento ulterior para ejecutar la resolución citada, con las costas. Los recurrentes piden también cualquier otro remedio justo y equitativo."

El Magistrado Perfecto concedió el interdicto preliminar pedido principalmente en virtud de la alegación expuesta en el párrafo 10 de la demanda, en el sentido de que la resolución cuestionada tenía por objeto, entre otras cosas, "la realización de fines siniestros, tales como la aprobación, sin la fiscalización e intervención de los recurrentes, del Bill Bell, de una medida de reorganización judicial terrorista para el personal de la judicatura y de otras semejantes, y para doblegar a los recurrentes por tal hitlérico procedimiento a los manejos de tal mayoría." Sometido el interdicto preliminar a la Corte en pleno, ésta lo aprobó en una votación de seis (6) contra cuatro (4), y al propio tiempo lo señaló a vista para la determinación de la cuestión de si su expedición estaba o no justificada. En dicha vista que duró 6 horas seguidas, desde la mañana hasta la tarde (una de las más largas si no la más larga que se haya celebrado jamás en los anales de esta Corte), arguyeron extensamente tanto la representación de los recurrentes como la de los recurridos. El Procurador General Tañada compareció y arguyó en nombre de estos últimos, pero limitándose en su informe a cuestionar e impugnar la jurisdicción de este Supremo Tribunal para conocer y enjuiciar el asunto bajo el principio de la separación de poderes que informa nuestra Constitución. Puede decirse sin exageración que el tema se agotó discutiéndose con minuciosidad los puntos constitucionales y jurídicos planteados en el asunto. Despues de la vista esta Corte en pleno, con la sola ausencia del Magistrado Jaranilla, y con la disidencia

del Magistrado Perfecto, acordó disolver el interdicto prohibitorio preliminar mediante la siguiente orden:

"Considering that the preliminary injunction was issued in the case of Jose O. Vera, petitioners, vs. Jose A. Avelino, respondents, (G. R. No. L-543), to preserve the *status quo* and thus prevent the execution of the acts alleged under oath in the last part of paragraph X of the petition, without the intervention of the petitioners; and taking into consideration that this court, after hearing both parties, at any rate believes and trusts that the respondents will not carry out said acts during the pendency of this proceeding, this court, without deciding whether or not the said injunction was justified, hereby resolves to dissolve it in the meantime, without prejudice to whatever action or decision this court may take or render on the questions involved in this case including that of jurisdiction."

Resulta evidente de autos que las cuestiones que tenemos que considerar y resolver son las siguientes: (1) a la luz de nuestra Constitución y de nuestras leyes ¿es legal y sostenible la resolución objeto de controversia, en cuanto por ella se priva a los recurrentes de sus asientos en el Senado de Filipinas, y de los derechos, privilegios y prerrogativas anejos a dichos asientos?; (2) a la luz de nuestra Constitución y de nuestras leyes ¿tiene este Tribunal Supremo jurisdicción y competencia para conocer, enjuiciar y decidir el asunto?

"*Primera cuestión.*—A la luz de nuestra Constitución y de nuestras leyes, ¿es legal y sostenible la resolución objeto de controversia, en cuanto por ella se priva a los recurrentes de sus asientos en el Senado de Filipinas, y de los derechos, privilegios y prerrogativas anejos a dichos asientos?"

Antes de la aprobación de la primera Constitución del Commonwealth de Filipinas (1935), la Legislatura era el juez de las elecciones, actas y condiciones de sus propios miembros. La disposición original relativa a esta materia era la contenida en la Ley del Congreso de los Estados Unidos de 1.^o de julio de 1902 (Ley Orgánica, artículo 7, párrafo 5), la cual preceptuaba que "La Asamblea (Filipina) decidirá de las elecciones, su resultado y las calificaciones de los representantes * * *." Cuando se aprobó la Ley del Congreso de 1916 (Ley Jones, de amplia autonomía, sección 18, párrafo 1), la citada disposición se reincorporó, con una modificación que la hacía más enfática insertándose la palabra "únicos," a saber: "Que el Senado y la Cámara de Representantes, respectivamente, serán los únicos jueces de las elecciones, del resultado, escrutinio y condiciones de sus miembros electivos * * *." Esta disposición no era de ningún modo original: no hacía más que trasplantar a este país la tradición y el sistema americano provisto en la cláusula 1.^a de la sección 5 del Artículo I de la Constitución de los Estados Unidos, que dispone que "cada Cámara será juez de las Elecciones, Actas y Condiciones de sus propios miembros * * *."

La Asamblea Constituyente convocada en 1934 para redactar la Constitución de nuestro Commonwealth pudo haber seguido sobre esta materia diferentes cursos de acción: reafirmar la tradición americana vigente en este país desde 1902; o seguir el ejemplo de algunos países—verbigracia, Canadá, Australia, Hungría y Polonia—que habían trasladado esta facultad de las Cámaras Legislativas al departamento judicial, hablando más concretamente, al Tribunal Supremo; o bien instituir un sistema mixto, creando un cuerpo constitucional separado e independiente, con jurisdicción exclusiva sobre la materia. La Asamblea Constituyente optó por esto último creando “una Comisión Electoral que se compondrá de tres Magistrados del Tribunal Supremo que serán designados por su Presidente, y de seis diputados escogidos por la Asamblea Nacional, tres de los cuales serán designados por el partido que tuviere en ella el mayor número de votos, y tres por el partido que le siga en el mayor número de votos. Esta Comisión Electoral será presidida por el Magistrado más antiguo y conocerá exclusivamente de todas las controversias relativas al resultado de la elección y a las calificaciones de los miembros de la Asamblea Nacional” (Artículo 4, Constitución de Filipinas, 1935). Cuando la Constitución se reformó en 1940 restaurándose la legislatura bicameral, la filosofía de la comisión electoral se respetó y conservó en la Constitución reformada y en lugar de una comisión se crearon dos, una para cada cámara, y ya no se llamaba Comisión Electoral sino Tribunal Electoral, como para recalcar y subrayar el carácter judicial del nuevo organismo. El precepto constitucional pertinente es como sigue:

“SEC. 11. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective members. Each Electoral Tribunal shall be composed of nine members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be members of the Senate or of the House of Representatives, as the case may be, who shall be chosen by each House, three upon nomination of the party having the largest number of votes and three of the party having the second largest number of votes therein. The senior Justice in each Electoral Tribunal shall be its Chairman.”

De lo expuesto resulta evidente que una importante facultad judicial que tenían las cámaras legislativas anteriormente—la facultad de actuar como jueces sobre las elecciones, actas y calificaciones de sus miembros—ha quedado eliminada completamente bajo la actual Constitución y traspasada también completa y plenamente al nuevo organismo constitucional—el Tribunal Electoral. La pregunta ahora en orden es si la resolución cuestionada que para mayor claridad llamaremos Resolución Pendatun representa o constituye, por parte de los Senadores recurridos, el ejercicio

de una facultad constitucional que no les pertenece sino al Tribunal Electoral, y nuestra contestación es decididamente afirmativa. Con esa resolución en la mano es como si los recurridos hubieran dicho a los recurrentes lo siguiente: "Señores, aquí tenemos un informe de la Comisión sobre Elecciones en donde se dice que en cuatro provincias del centro de Luzón no ha habido sufragio libre, sincero y ordenado, por los actos de intimidación y violencia de vuestros partidarios. Sin los votos de esas provincias, vosotros no hubierais triunfado. Por tanto, hasta que se decidan en vuestro favor las protestas formuladas contra vuestras actas ante el Tribunal Electoral, os negamos el derecho de jurar, de sentarse en estos escaños, de participar en las deliberaciones del Senado y de gozar de los derechos, prerrogativas y privilegios anejos al cargo de Senador." ¿Qué es esto sino una innegable usurpación de la facultad exclusiva que tiene el Tribunal Electoral de ser el único juez de las controversias relativas a la elección, actas y calificaciones de los miembros de la cámara a que corresponde dicho tribunal?

Se arguye que independientemente de la cuestión electoral cada cámara, para proteger su existencia, su buen nombre y su decoro, tiene el poder inherente de suspender a cualquier miembro suyo; que la Resolución Pendatun se inspiró en estos motivos; que la suspensión de los recurrentes es un acto político que nada tiene que ver con la determinación de sus actas por el Tribunal Electoral y no se halla sujeto a revisión de parte del departamento judicial por cuestionable que fuera el mismo desde el punto de vista del derecho o de la moral pública; y que, por tanto, no hay tal usurpación de poderes constitucionales, no habiéndose los recurridos entrometido en la esfera de acción del Tribunal Electoral. Sin embargo, no hay más que leer la resolución en cuestión para convencerse de que su entera motivación se deriva de las elecciones de 23 de Abril, dándose en ella por establecido, en virtud del informe de la Comisión sobre Elecciones, que el triunfo de los recurrentes se debió a un estado de terror y violencia en las Provincias de Pampanga, Tárlac, Nueva Écija y Bulacán. Los "*por cuantos*" de la resolución hacen referencia a las supuestas anomalías e irregularidades que viciaron el sufragio en dichas provincias; hacen ciertas afirmaciones de carácter general como la de que Filipinas, a fuer de nación y estado democrático, debe condenar todo acto tendente a derrotar la voluntad popular, y la de que "para mantener vivo entre nosotros el respeto a las instituciones democráticas, a ningún hombre o grupo de hombres se debe permitir que reporten beneficio de los resultados de una elección llevada a cabo bajo coerción"; y al final se dice "Por cuanto, sobre la base de los informes arriba citados de la Comisión sobre

Elecciones se han formulado protestas *ante* el Tribunal Electoral del Senado contra la elección de José O. Vera, Ramón Diokno y José E. Romero"; y luego la parte dispositiva en virtud de la cual se priva a los recurrentes del juramento y de sus asientos en el Senado entre tanto no se resuelvan las protestas formuladas contra sus actos, *interregno que puede durar meses y hasta años*. De todo esto resulta bien claro que los considerandos de la resolución versan precisamente sobre los mismos hechos electorales cuya determinación incumbe exclusivamente al Tribunal Electoral, y que la interdicción, o mejor dicho, la suspensión de los derechos, prerrogativas y privilegios de los recurrentes se basa indudablemente en tales considerandos. No hay en la resolución ni la más mínima insinuación de que se haya aprobado por altos motivos de dignidad y decoro senatorial—eso que algún tratadista llama gráficamente medida de profilaxis—como para evitar el roce deshonroso con miembros que fueran algo así como de la casta despreciable de los intocables, aquejados de lepra moral en sus personas. No hay ni el menor cargo de torpeza moral contra los recurrentes, ni siquiera se insinúa que éstos fueron directa o indirectamente responsables del alegado estado de terror y violencia. La conclusión indeclinable, pues, es que la Resolución Pendatun enjuicia y resuelve cuestiones o "issues" puramente electorales, aceptando *prima facie* un informe incompetente sobre terrorismo, violencias y fraudes, y como tal constituye una intromisión en la facultad que bajo la Constitución tiene el Tribunal Electoral del Senado de ser el único juez de las controversias relativas a la elección, actas y calificaciones de los miembros de dicho alto cuerpo colegislador.

Pero admitamos por un momento que la Resolución Pendatun tiene ese carácter *profiláctico* que le atribuyen a última hora; que, contra lo que es evidente y claro con claridad meridiana, esa resolución nada tiene que ver con la determinación judicial de las actas de los recurrentes por el Tribunal Electoral. La pregunta otra vez en orden es la siguiente: sometida la Resolución Pendatun a la piedra de toque de nuestra Constitución ¿puede resistir con éxito la prueba? Nuestra contestación es terminantemente negativa. La Constitución filipina es el producto de la sabiduría, experiencia y genio político de nuestro pueblo. No es un documento enteramente original: en ciencia política las concepciones originales no abundan. Hemos volcado en ella no sólo el resultado de nuestra experiencia necesariamente limitada, sino lo que hemos aprendido de la sabiduría y experiencia de otros pueblos más avanzados que nosotros, particularmente del pueblo Americano, con el cual nos ha ligado una convivencia de cerca de medio siglo. Después de largas y laboriosas deliberaciones nuestra Asamblea

Constituyente, elegida por el pueblo (1934-1935), adoptó el sistema presidencial de gobierno dividido en tres altos poderes, independientes entre si pero coordinados en un mecanismo cuidadosamente elaborado de frenos y contrapesos. Esos poderes son: legislativo, ejecutivo y judicial. Sus altas facultades y funciones se hallan especificadas en la Constitución, en capítulos separados. En el uso del lenguaje se ha evitado la minuciosidad, el pormenorismo característico de las leyes ordinarias, a fin de hacer del instrumento suficientemente amplio y flexible para acomodarse y para subvenir a las necesidades y condiciones cambiantes de los tiempos; pero, con todo, los trazos, los lineamientos son suficientemente claros, firmes y seguros, y creemos puede decirse sin inmodestia que en concisión, en claridad y en buen ordenamiento nuestra Constitución no cede a ninguna de las constituciones escritas que se conocen.

Examinemos ahora el departamento o poder legislativo que es lo que nos concierne e interesa en el presente asunto. Es un principio constitucional bien establecido que el poder de legislar es ilimitado en tanto en cuanto no pugna con la Constitución, la cual opera como una limitación. Todos los demás poderes y facultades que no tengan carácter legislativo deben ser conferidos expresa o implícitamente. Nuestro Congreso, actuando concurrentemente por medio de sus dos cámaras, tiene el poder de legislar. "El poder legislativo queda investido en un Congreso de Filipinas, compuesto de un Senado y de una Cámara de Representantes (Artículo VI, sección 1, Constitución de Filipinas, 1940). Pero además de este poder de conjunto, cada cámara tiene ciertas facultades, entre ellas algunas de carácter disciplinario, a saber: (a) la de compelir la asistencia de miembros ausentes en la forma y bajo las penas que dicha cámara prescriba; (b) la de castigar a sus miembros por conducta desordenada, y, con la concurrencia de dos terceras partes de sus miembros, expulsar a un miembro por tal motivo (artículo VI, sección 10, ap. 2 y 3). Fuera de estas facultades no hay en nuestra Constitución ninguna otra que autorice la imposición de un castigo o pena, o envuelva una privación de derechos, prerrogativas y privilegios, siquiera sea temporal, tal como la que se provee en la Resolución Pendatun. ¿Encaja esta resolución en cualquiera de las facultades arriba enumeradas? Evidentemente que no. No encaja en el inciso "a"—la facultad de compelir disciplinariamente la asistencia de miembros ausentes—porque es superfluo decir que no se trata ni remotamente de tal caso. Tampoco encaja en el inciso "b" porque se ha admitido desde el comienzo que el caso que nos ocupa no es el de conducta desordenada de un miembro. Tampoco encaja en la facultad de determinar y resolver la legalidad y solvencia de las actas y credenciales de los re-

currentes porque ya hemos demostrado hasta la saciedad que habiéndose retirado *totalmente* de las cámaras la *substancia*, la *esencia* de esa facultad trasladándola al Tribunal Electoral, quedó también *ipso facto* retirada y eliminada la facultad de suspender que es nada más que un *incidente*, un *aledaño* de la substancia.

Pero se dice: el Tribunal Electoral no tiene la facultad de suspender, ésto se halla admitido por todo el mundo; luego esa facultad ha quedado, por lo menos, en las cámaras como *residuo* no afectado por el traspaso de jurisdicción sobre las credenciales y actas electorales. Sin embargo, ésto no es más que una hábil sutileza. En la Constitución no hay más que dos categorías de poderes: el expreso o el implícito (*either by express grant or by fair implication from what is granted*). Como quiera que esa *reserva*, ese *residuo* (la facultad de suspender) no está conferido expresamente en la Constitución, luego hay que suponerlo *implícito*. Pero ¿implícito de qué? Tiene que ser de algo, de un poder más general y más amplio expresamente conferido (*parte de un todo*) que en este caso tendría que ser el poder de conocer y resolver las controversias electorales sobre las actas de los miembros del Congreso. Es así que este poder ya no lo tienen las cámaras bajo la Constitución; luego tampoco queda nada *implícito* en ellas, so pena de sostener que lo implícito, que es nada más que un *incidente*, puede subsistir por si solo sin la *substancia*—el vaso esencial que lo envuelve y entraña. El corolario forzoso de todo ésto es que los redactores de la Constitución filipina eliminaron por completo la facultad de suspender no sólo del Congreso sino del Tribunal Electoral; que la voluntad soberana del pueblo expresada en el código fundamental, es que ningún protestado sería privado de su asiento ni por un solo minuto; que ninguna presunción se establecería en contra de la legitimidad y solvencia de su acta; que solamente una sentencia final podría cerrarle las puertas del Congreso. No tenemos porque averiguar si con esta decisión la Asamblea Constituyente quiso erigir un firme valladar a los excesos y demasiás de la pasión política creando un clima propicio para el desarrollo de las minorías en un país en que, como el nuestro, ciertas causas y circunstancias han retardado el turno periódico y saludable de los partidos; todo lo que nos incumbe hacer es señalar y destacar el hecho inexorable, la volición constitucional.

Se han citado dos casos de nuestra jurisprudencia parlamentaria para justificar la Resolución Pendatun: el caso de José Fuentebella en el Senado de Filipinas, en 1916, y el caso de Nicolás Raféls en la Cámara de Representantes, en 1925. Bajo la alegación de haberse cometido graves irregularidades y fraudes en las primeras elecciones senatoriales celebradas en el 6.^o distrito (provincias bicolanas)

al candidato electo José Fuentebella se le negó *prima facie* el juramento y el asiento pendiente la resolución de la protesta formulada contra su acta. Lo mismo se hizo en el caso de Nicolás Rafóls, por alegados fraudes electorales cometidos en el 6.^o distrito diputacional de Cebú. Pero la endeblez e inaplicabilidad de estos precedentes salta inmediatamente a la vista si se tiene en cuenta que cuando se establecieron las cámaras legislativas eran constitucionalmente los únicos jueces de la elección, actas y calificaciones de sus miembros; así que la suspensión *prima facie* del juramento y del asiento no fué más que un *incidente* en el ejercicio de esa facultad; y, prescindiendo de si esto era justo o injusto, prudente o arbitrario, parecía incuestionable que estaba dentro de los poderes y facultades de las cámaras el hacerlo.

Pero, en realidad, los casos de Fuentebella y Rafóls pueden citarse para un efecto completamente opuesto al perseguido por los abogados de los recurridos cuando se analizan y discuten amplia y objetivamente los motivos, circunstancias y designios que indujeron a nuestra Asamblea Constituyente a abandonar la bien arraigada tradición americana de hacer de las cámaras legislativas los únicos jueces de la elección, actas y calificaciones de sus miembros, trasladando la jurisdicción a un organismo constitucional completamente separado e independiente. Un análisis de este género viene a ser altamente revelador y expresivo. Lo primero que embarga la atención del observador es que cuando se adoptó esta reforma fundamental y original por la Asamblea Constituyente dominaba en Filipinas un partido político fuerte, denso, acaudillado por una personalidad genial, brillante, dinámica y poderosa. Ese partido acababa de ganar en unas elecciones apasionadísimas y muy reñidas una victoria espectacular, abrumadora, que le daba el dominio y control de todos los resortes de la vida política no sólo en la nación sino hasta en las provincias y municipios. Ese partido dominaba naturalmente también la Convención Constitucional, la Asamblea Constituyente. ¿Qué hizo ese partido en medio de su omnipotencia? ¿Le emborrachó ese peligroso licor de los dioses—el licor de la victoria, el licor del poder? No. Ese partido, sus caudillos, resolvieron ser generosos, ser justos, ser prudentes, ser democráticos, y lo fueron; determinaron pensar en términos de humanidad, en términos de nación, en términos de justicia pero justicia de verdad, en términos de libertad y democracia, y lo hicieron tal como lo pensaron. Podían haber escrito una constitución a su talante—una constitución que sirviese sus propios fines, que asegurase su perpetuidad en el poder. No lo hicieron. Y no solamente no lo hicieron, sino que hicieron algo más; algo extraordinario, inconcebible, juzgado a la luz y según la norma usual del egoísmo de los partidos. Teniendo en sus manos un poder

enorme, formidable, sumamente tentador, el poder de resolver las controversias electorales sobre las actas de los miembros de la Legislatura, renunciaron a ese poder para alojarlo en un cuerpo constitucional separado e independiente, el cual es prácticamente un tribunal de justicia: la Comisión Electoral, hoy Tribunal Electoral. La determinación de hacer este cuerpo lo más *apolítico* posible se denota en el hecho de que sus miembros legislativos están distribuidos en igual número, 3-3, de suerte que los 3 Magistrados componen el factor decisivo.

¿Por qué los redactores de la Constitución, y, sobre todo, por qué el partido político mayoritario pudo hacer esta renuncia de la que pocos ejemplos hay en la historia política del mundo? No parece difícil imaginarse los motivos, las causas, sobre todo para uno que como el autor de esta opinión tuvo algo que ver, siquiera muy modestamente, con las tareas de la Asamblea Constituyente. El pueblo filipino estaba empeñado en una suprema, altísima tarea—la de estructurar el Estado, la de escribir el código fundamental de la nación no sólo para los 10 años del Commonwealth sino para la República que se proclamaría después de dicho período de tiempo. Todo el mundo sabía que la suerte de la democracia en Filipinas dependía principalmente de la Constitución que se escribiera, no sólo en su letra sino en su espíritu, y, sobre todo, de la forma y manera como ella moldearía, penetraría e influiría en la vida cotidiana del pueblo y del individuo. Desde luego no éramos unos ilusos, utopistas, perfeccionistas; no aspirábamos ni mucho menos a crear un trasunto de la república ideal de Platón; pero deseábamos hacer lo mejor posible dadas nuestras circunstancias y limitaciones, dada nuestra historia y tradiciones, y dado el temperamento y genio político y social de nuestro pueblo. Se había acuñado y popularizado por aquel tiempo la frase "justicia política" para denotar la clase de justicia convencional que cabía esperar en relación con las protestas electorales planteadas ante las cámaras legislativas. No sólo se aceleraba o demoraba el despacho de las mismas a ritmo con los dictados de ciertas conveniencias de taifa o grupo, sino que no pocas veces el complejo político o personal era el factor determinante en las resoluciones y decisiones que se tomaban. Todo esto lo sabían los delegados a la asamblea constituyente, lo sabían los líderes de los partidos, lo sabían los escritores y pensadores dedicados al estudio de las ciencias políticas y sociales.

En la Convención había delegados que eran miembros actuales y pasados de la Legislatura, hombres que sabían por propia experiencia cómo se resolvían las protestas electorales en las cámaras legislativas y que, además, sabían por sus lecturas lo que sobre el particular ocurría en otros países. Allí estaba, como delegado, Nicolás Rafols—

actor del drama político que determinó uno de los precedentes parlamentarios que se citan—acaso rumiando todavía en su fuero interno el agravio contra lo que reputara arbitrariedad cometida por la mayoría en su caso. ¿Qué de extraño había que en medio de tal “background”, en medio de tal ambiente ideológico se formara una fuerte opinión en favor de un cambio de sistema, en favor de un arbitrio constitucional que sustituyera la llamada “justicia política” con una justicia de verdad, una “justicia judicial?” Así se creó la Comisión Electoral. Nada mejor que las siguientes palabras del malogrado Magistrado Abad Santos en su luminosa opinión concurrente en el celebrado asunto de Angara *contra* Comisión Electoral, para definir el carácter del sistema: “El objeto que se trataba de obtener con la creación de la Comisión Electoral no era crear un cuerpo que estuviera por encima de la ley, *sino el elevar las elecciones legislativas de la categoría de cuestiones políticas a la de justiciables*, Angara *contra* Comisión Electoral (63 Jur. Fil., 200). Y el ponente en dicho asunto el Magistrado Laurel se explaya más todavía con los siguientes pronunciamientos que no tienen desperdicio:

“Los miembros de la Convención Constitucional que planearon nuestra ley fundamental eran, en su mayor parte, hombres de edad madura y de experiencia. A buen seguro muchos de ellos estaban familiarizados con la historia y desarrollo político de otros países del mundo. Por tanto, cuando creyeron conveniente crear una Comisión Electoral como un organismo constitucional y lo invistieron con la exclusiva función de conocer y fallar las controversias electorales, actas y condiciones de los miembros de la Asamblea Nacional, debieron de haberlo hecho así, no solamente a la luz de su propia experiencia, sino también teniendo en cuenta la experiencia de otros pueblos ilustrados del mundo. *La creación de la Comisión Electoral fué planeada para remediar ciertos males que conoció los autores de nuestra Constitución.* No obstante la tenaz oposición de algunos miembros de la Convención a su creación, el proyecto como antes se ha dicho, fué aprobado por ese cuerpo mediante una votación de 98 contra 58. Todo cuanto se puede decir ahora sobre la aprobación de la Constitución, la creación de la Comisión Electoral es la expresión de la sabiduría y ‘la justicia esencial al pueblo’. (Abraham Lincoln, First Inaugural Address, marzo 4, 1861.)

“De las deliberaciones de nuestra Convención Constitucional resulta evidente que el objeto era traspasar en su *totalidad* toda la facultad previamente ejercitada por la Legislatura en asuntos pertenecientes a protestas electorales de sus miembros, a un tribunal independiente e imparcial. Sin embargo, no fué tanto el conocimiento y apreciación de precedentes constitucionales contemporáneos como la ha tiempo sentida necesidad de fallar protestas legislativas, *libres de prejuicios partidistas* lo que impulsó al pueblo, obrando por medio de sus delegados a la Convención, a establecer este Cuerpo que se conoce por Comisión Electoral. Con estas miras, se creó un cuerpo en el que tanto el partido de la mayoría como el de la minoría están igualmente representados para contrarrestar la influencia partidista en sus deliberaciones, y dotado, además, de carácter judicial mediante la inclusión entre sus miembros de tres magistrados del Tribunal Supremo.

por la Asamblea referente a las elecciones, actas y condiciones de sus miembros" (Véase Angara *contra* Comisión Electoral, *supra*, pág. 179). Ese todo de que habla el Sr. Roxas excluye la idea de cualquier reserva o residuo dejado a las cámaras del Congreso.

Se dice, sin embargo, en la opinión de la mayoría que los debates en la Asamblea Constituyente sobre el precepto constitucional de que se trata demuestran que la intención de los redactores de la Constitución no fué el entregar *todo* a la Comisión Electoral (ahora Tribunal Electoral), sino que se le confirió solamente la facultad de ser "the sole judge of all contests relating to the election, returns, and qualifications of the members of the National Assembly". Es decir—se arguye—que cuando no hay "contest" o contención las cámaras tienen la facultad de entender y juzgar de "la elección, actas y cualificaciones de sus miembros". Esto se desprende, según la ponencia, del hecho de que mientras el "draft" o proyecto original decía lo siguiente:

"The elections, returns and qualifications of the members of the National Assembly and all cases contesting the election of any of its members shall be judged by an Electoral Commission * * *,

la redacción final del proyecto quedó como sigue:

*** * * * *

"The Electoral Commission shall be the sole judge of all contests relating to the election, returns, and qualifications of the members of the National Assembly."

Se asevera enfáticamente en la opinión de la mayoría que la supresión de la primera parte de la cláusula es harto significativa. Ello demuestra, se dice, que la cláusula tenía dos partes con significados distintos: la primera parte, relativa a casos no contenciosos, y la segunda referente a casos contenciosos. La eliminación de la primera parte venía a reducir consiguientemente la jurisdicción de la Comisión Electoral a los casos contenciosos, reservándose los no contenciosos a las cámaras. Y para probar esta tesis a primera vista deslumbrante se transcribe en la ponencia una larga tirada del diario de sesiones de la Asamblea Constituyente—tirada que, en verdad, ofrece ciertos equívocos y ambigüedades. Pero ésto no es más que un aspecto del cuadro.

Esto nos obliga a revisar y examinar toda la parte del diario de sesiones que abarca los debates sobre el particular. Afortunadamente, las discusiones fueron amplias, plenas de información y detalle, y sobre todo llevadas muy inteligentemente. El Delegado Manuel Roxas, ahora Presidente de Filipinas, era quien sostenía el lado afirmativo, esto es, el precepto original tal como lo había sometido el llamado Comité de Siete y tal como queda transscrito en el párrafo anterior. Un grupo de Delegados, encabezado por el Hon. Alejo Labrador, de Zambales, estaba fun-

damental y decididamente opuesto a la fórmula. Estos Delegados no aceptaban la reforma propuesta, querían que se conservase el antiguo sistema por virtud del cual las cámaras eran los jueces exclusivos de la elección, actas y cualificaciones de sus miembros. Acaso sea pertinente consignar el hecho de que si bien es verdad que los partidos (*anti* y *pro*) habían declarado una tregua patriótica y saludable en sus luchas dentro de la Convención, el Sr. Roxas pertenecía al partido minoritario—el de los *pros*—mientras que el Sr. Labrador era de la mayoría, el partido fuerte y poderoso de los *antis* cuyo indiscutible líder era el entonces Presidente del Senado Sr. Quezon. La oposición del Sr. Labrador y compañeros se fundaba principalmente en la teoría de la separación de poderes: ellos creían que la reforma era demasiado radical, que la misma venía a mermar grandemente el poder y prestigio del departamento legislativo, reduciéndolo a un estado de inferioridad y vasallaje, particularmente al poder judicial, en virtud de la intervención de miembros de la Corte Suprema en la composición de la Comisión o Tribunal Electoral. Acaso sea pertinente decir también que entre los ardientes patrocinadores de la reforma figuraban distinguidos Delegados de la mayoría entre ellos el Hon. Vicente J. Francisco, de Cavite, en la actualidad Senador de Filipinas.

Veamos ahora el proceso de cómo se enmendó el "draft" original del precepto. Las siguientes interpellaciones arrojan copiosa luz sobre la cuestión.

"Delegate VENTURA. We have a doubt here as to the scope of the meaning of the first four lines, paragraph 6, page 11 of the draft reading: 'The elections, returns and qualifications of the members of the National Assembly and all cases contesting the election of any of its members shall be judged by an Electoral Commission * * *.' I should like to ask from the gentleman from Capiz whether the election and qualification of the members whose election is not contested shall also be judged by the Electoral Commission."

"Delegate ROXAS. If there is no question about the election of the member, there is nothing to be judged; that is why the word 'judge' is used to indicate a controversy. If there is no question about the election of a member, there is nothing to be submitted to the Electoral Commission and there is nothing to be determined."

"Delegate VENTURA. But does that carry the idea also that the Electoral Commission shall confirm also the election of those whose election is not contested?"

"Delegate ROXAS. There is no need of confirmation. As the gentleman knows, the action of the House of Representatives in confirming the election of its members is just a matter of the rules of the Assembly. *It is not constitutional. It is not necessary.* After a man (adviértase bien esto) files his credentials that he has been elected, that is sufficient, unless the election is contested." (Aruego, The Framing of the Philippine Constitution, pp. 267, 268.)

Como se ve, lo que le preocupaba al Delegado Ventura era que con la fraseología indicada la Comisión Electoral tuviera jurisdicción y competencia hasta sobre las credenciales

"La Comisión Electoral es una creación constitucional, investida de las facultades necesarias para el cumplimiento y ejecución de las funciones limitadas y específicas que la ha asignado la Comisión. Aunque no es un Poder en nuestro Gobierno tripartito, es, para todos los fines, cuando obra dentro de los límites de su autoridad, un organismo independiente. Se aproxima más, ciertamente, al Departamento Legislativo que a cualquiera otro. El lugar que ocupa la disposición legal (artículo 4) que crea la Comisión Electoral en el Título VI, titulado 'Departamento Legislativo' de nuestra Constitución, es muy significativo. Su composición es también significativa por cuanto está constituida por una mayoría de miembros de la Legislatura. Pero es un cuerpo separado e independiente de la Legislatura.

"La concesión de facultades a la Comisión Electoral para conocer de todas las controversias relativas a las elecciones, actas y condiciones de los miembros de la Asamblea Nacional, tiene por objeto hacer que esas facultades sean tan completas y queden tan incólumes como si hubieran continuado originalmente en la Legislatura. El haber expresamente investido de esas facultades a la Comisión Electoral, es una negativa tácita del ejercicio de esas facultades por la Asamblea Nacional. Y esto es una *restricción tan eficaz a las facultades legislativas como una prohibición expresa contenida en la Constitución* (*Ex parte Lewis*, 45 Tex. Crim. Rep., 1; *State vs. Whisman*, 36 S. D., 260; L. R. A., 1917B, 1). * * *" Angara *contra* Comisión Electoral (63 Jur. Fil., 151, 188-190.)

Acaso se pueda decir algo más todavía acerca de los motivos que indujeron la creación de la Comisión Electoral; acaso se pueda aventurar la afirmación de que con este cuerpo los redactores de la Constitución, los caudillos de los partidos se propusieron asegurar por todos los medios y garantías la vida y crecimiento de la democracia en Filipinas. Democracia es esencialmente libre discusión de los asuntos públicos, de los problemas de la comunidad; libre expresión del pensamiento y de la opinión. De esto se sigue necesariamente un régimen basado en la existencia de una mayoría que gobierna y de una minoría que aspira a gobernar entretanto que vigila los actos del gobierno en su doble papel de censor y de aspirante al poder. La mejor piedra de toque para apreciar y juzgar la calidad de un régimen político es la manera y forma cómo trata a las minorías y oposiciones. Un gobierno totalitario, despótico, las liquida, las ahoga; un gobierno democrático no sólo las respeta, sino que crea para ellas un clima vital propicio. Mirado en este sentido el Tribunal Electoral es un instrumento de minorías por autonomía: la idea básica de su creación es el desposeer a las mayorías del poder de destruir, de aniquilar a las minorías mediante lo que cínicamente se ha denominado "justicia política," e impartir a las minorías las máximas garantías de una justicia de verdad—una "justicia judicial." El delegado Vicente J. Francisco, ahora "Floor-Leader" de la mayoría en el Senado, pronunciando su discurso a favor de la reforma en la Asamblea Constituyente, dijo entre otros conceptos las siguientes significativas palabras: "Many have criticized, many have com-

plained against the tyranny of the majority in electoral cases * * *” (Aruego, *The Framing of the Philippine Constitution*, tomo I, pág. 263). Por eso es un absurdo sostener que la facultad de suspender utilizada mediante la Resolución Pendatun haya quedado en el Congreso como *residuo*, independientemente de la jurisdicción exclusiva del Tribunal Electoral para resolver protestas electorales legislativas. Ello equivaldría a sostener que los redactores de la Constitución pusieron un remedio para derrotarlo al propio tiempo mediante una puerta reservada y trasera por la que podría escurrirse el pequeño monstruo de la “justicia política”. Este juego infantil no podían haberlo hecho los redactores de la Constitución, los líderes de los partidos que tuvieron alguna responsabilidad en la redacción de dicho documento. ¿Qué más? Esa facultad para suspender equivale prácticamente a una carta blanca para intervenir y estorbar las actuaciones y procedimientos del Tribunal Electoral, provocando suspicacias, creando anticipadamente prejuicios no sólo en la mente del público sino de los miembros mismos, empequeñeciendo, en una palabra, el prestigio del tribunal. ¿Cómo se puede pensar que la Asamblea Constituyente permitiera y posibilitara ese resultado antijudicial, reservando algo al Congreso en un traspaso de facultades que se consideraba total, absoluto e incondicional? Los tribunales ordinarios de justicia están por ley protegidos contra todo estorbo y obstrucción a sus funciones. El Tribunal Electoral—criatura de la misma Constitución—tiene, por lo menos, iguales si no mejores títulos a esa impermeabilidad, mejor todavía, a esa inmunidad contra toda obstrucción y entorpecimiento. El hecho de que la intromisión venga del Congreso o de una de sus cámaras no puede ser una justificación.

Las deliberaciones de la Asamblea Constituyente arrojan buena luz sobre el espíritu del precepto que nos ocupa. Que el traspaso de facultades fué total, absoluto; que al Congreso no se reservó ninguna facultad, mucho menos la de suspender, en toda cuestión relativa a la elección de sus miembros, lo denotan bien claro ciertas observaciones, que a estas alturas resultan proféticas, del Delegado Manuel Roxas, uno de los líderes más autorizados de la Asamblea Constituyente, hoy primer Magistrado de la nación. El Sr. Roxas estaba contestando varias interpelaciones sobre el alcance del nuevo sistema propuesto. Replicando al Delegado Ventura no parece sino que el Sr. Roxas presentiera la Resolución Pendatun o actos semejantes a ella cuando dijo lo siguiente: “* * * Además, si la Asamblea desea anular el poder de la Comisión (Electoral), puede hacerlo así mediante ciertas maniobras en su primera sesión cuando se someten las actas a la Asamblea. El objeto es dar a la Comisión Electoral todo el poder ejercitado

no protestadas; parece que se temía esta ambigüedad. Pero ni el Delegado Ventura ni nadie en la Convención tuvo jamás en la mente la idea de que la fraseología envolvía una dual jurisdicción: una, de parte de la Asamblea Nacional, sobre las credenciales no protestadas; y otra, de parte de la Comisión Electoral, sobre las credenciales protestadas. Y el Delegado Roxas, con sus contestaciones, estableció bien claramente que la cláusula, tal como estaba redactada, presuponía necesariamente un "contest," una controversia, así que se empleaba la palabra "judge"; y el "contest," el litigio tenía que ser enjuiciado naturalmente por la Comisión Electoral.

De la última contestación del Delegado Roxas transcrita arriba se deduce inquestionablemente que él no admitía la posibilidad de que la Asamblea Nacional rehusase su confirmación a una credencial no protestada o contendida. Él sostenía que esta confirmación no era constitucional, no era necesaria. Por eso él dijo categóricamente: "After a man files his credential, that is sufficient, unless the election is contested." Aplicado este criterio al caso que nos ocupa, equivale a lo siguiente: Despues de haberse presentado al Senado las credenciales de los recurrentes Sres. Vera, Diokno y Romero (a ello monta el certificado de proclamación expedido por la Comisión sobre Elecciones), ello era bastante, a menos que su elección fuese cuestionada, y cuestionada legalmente, esto es, protestada debidamente ante el Tribunal Electoral.

El pensamiento del Delegado Roxas se aclaró más contestando otras interpellaciones. Él dijo positiva y terminante, replicando al Delegado Cinco, que no había ninguna diferencia entre la primera y segunda parte de la cláusula; que, en realidad, los casos de elecciones contendidas ya están incluidos en la frase "the elections, returns and qualifications," y que la frase "and contested elections" se insertó meramente para los efectos de mayor claridad.

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"Delegate CINCO. Mr. President, I have a similar question as that propounded by the gentleman from Ilocos Norte (Mr. Ventura) when I arose a while ago. However, I want to ask more questions from the Delegate from Capiz. This paragraph 6 on page 11 of the draft cites cases contesting the election as separated from the first part of the section which refers to elections, returns and qualifications.

"Delegate ROXAS. *That is merely for the sake of clarity.* In fact the cases of contested elections are already *included* in the phrase "the elections, returns and qualifications." This phrase "and contested elections" was inserted merely for the sake of *clarity*.

"Delegate CINCO. Under this paragraph, may not the Electoral Commission, at its own instance, refuse to confirm the election of the members?

"Delegate ROXAS. I do not think so unless there is a protest." (Aruego, *id.*, p. 269.)

Pero hay todavía una cosa más importante. En realidad, esta misma cuestión que nos ocupa ya se planteó en aquellos debates y la solución que entonces se le dió cuadra perfectamente con el criterio que sostendemos en esta disidencia. El Delegado Labrador, líder, como ya se ha dicho, de los opositores a la reforma, hizo al Delegado Roxas algunas interpelaciones que parecían hechas en anticipación a los presentes acontecimientos. He aquí el diálogo Roxas-Labrador:

"Delegate LABRADOR. Does not the gentleman from Capiz believe that unless this power is granted to the Assembly, the Assembly on its own motion does not have the right to contest the election and qualification of its members?

"Delegate ROXAS. I have no doubt that the gentleman is right. If this draft is retained, as it is, even if two-thirds of the Assembly believe that a member has not the qualifications provided by law, *they cannot remove him for that reason.*

"Delegate LABRADOR. So that the right to remove shall only be retained by the Electoral Commission.

"Delegate ROXAS. By the Assembly *for misconduct.*

"Delegate LABRADOR. I mean with respect to the *qualifications* of the members.

"Delegate ROXAS. Yes, by the *Electoral Commission.*

"Delegate LABRADOR. So that under this draft, no member of the Assembly has the right to question the eligibility of its members?

"Delegate ROXAS. Before a member can question the eligibility, *he must go to the Electoral Commission* and make the question heard before the Electoral Commission.

"Delegate LABRADOR. So that the Electoral Commission shall decide whether the election is contested or not contested.

"Delegate ROXAS. Yes, sir; that is the purpose." (Aruego, *idem*, pp. 269, 270.)

Este diálogo Roxas-Labrador nos da la mejor clave para interpretar el precepto. Labrador preguntó si bajo el mismo la Asamblea tenía derecho a cuestionar, de su propia iniciativa (*on its motion*), la *elección y cualificación* de sus miembros; Roxas contestó que NO, que "aunque *dos terceras partes* de la Asamblea creyeran que un miembro no tenía las cualificaciones provistas por la ley, *ellos no podrían removerle por tal razón*".

Labrador volvió a preguntar inquirendo sobre quién tenía el derecho de remover. Roxas contestó: la Asamblea Nacional por *mala conducta* (*for misconduct*); y la Comisión Electoral, con respecto a las cualificaciones de los miembros de la Asamblea.

Y cuando Labrador volvió a remachar preguntando si un miembro de la Asamblea Nacional podría, bajo el precepto que se discutía, cuestionar la elegibilidad de sus miembros, Roxas contestó categóricamente que "*antes de que un miembro pudiera cuestionar la elegibilidad (de otro) debía ir a la Comisión Electoral y hacer que la cuestión se oyera ante la Comisión Electoral.*" Es decir que, aplicado este criterio al caso que nos ocupa, ni el Senador Pendatun, ni

ningún otro Senador, ni nadie tenía derecho a cuestionar la elegibilidad de los recurrentes Sres. Vera, Diokno y Romero ante el Senado, sino que el asunto debía llevarse directamente al Tribunal Electoral y hacer que éste lo enjuiciara.

Pero se preguntará: ¿entonces por qué se reformó el "draft" o proyecto original eliminando la primera cláusula y dejando sólo la segunda, o sea la frase "all cases contesting the elections, returns and qualifications," etc. etc.? Es verdad, se hizo la enmienda, pero la misma no es sustancial, no afecta al fondo del precepto, no involucra el espíritu del sistema tal como lo definió y explicó el Delegado Roxas en sus luminosas respuestas a las diversas interpellaciones, particularmente las dadas al Delegado Labrador. Se aceptó la enmienda más bien por razones puramente psicológicas, esas que conoce bien todo aquél que esté familiarizado con la mecánica de los parlamentos y asambleas deliberativas. Por un lado, el Delegado Roxas veía que había ciertas dudas con respecto al alcance del proyecto tal como estaba fraseado; pero, por otro lado, él decía que esas dudas carecían de fundamento, que las dos cláusulas del precepto tenían un mismo significado, que la segunda ya estaba contenida en la primera y se insertaba tan sólo para fines de claridad. Así que, hábil estratega parlamentario, creyó que podía aceptar perfectamente la enmienda, entre cuyos proponentes (esto es muy significativo, como se verá más adelante) figuraba por cierto el Delegado Rafols, pues con ello no perdía nada, no comprometía ni un ápice de su posición, y en cambio ganaba mucho, atraía el apoyo de los indecisos, aseguraba la aprobación del precepto en la votación final, derrotando a los que estaban fundamentalmente opuestos al mismo como, en efecto, los derrotó por 98 votos contra 56. Que la enmienda no era sustancial y de ningún modo afectaba al sistema, así lo declaró categóricamente el Sr. Roxas cuando, defiriendo a una sugerición del Presidente Recto de la Convención, definió el alcance del cambio diciendo que era "tan sólo para obviar la objeción apuntada por varios delegados en el sentido de que la primera cláusula del 'draft' que dice 'The election, returns and qualifications of the members of the National Assembly' parece dar a la Comisión Electoral el poder de determinar hasta la elección de los miembros que no han sido protestados." Es decir, que lo único que se quiso aclarar y establecer fuera de toda duda con la enmienda es que el poder de la Comisión Electoral no podía extenderse a las credenciales no protestadas, pero jamás se pensó que el efecto de la enmienda era el desgajar este poder de la Comisión Electoral para dejarlo como un *residuo* en la Legislatura; en otros términos, jamás se imaginó que con la enmienda la Asamblea Nacional todavía podría ser juez de las credenciales no

protestadas de sus miembros. He aquí las palabras textuales del Sr. Roxas:

"The difference, Mr. President, consists only in obviating the objection pointed out by various delegates to the effect that the first clause which states 'The election, returns and qualifications of the members of the National Assembly' seems to give to the Electoral Commission the power to determine also the election of the members who have not been elected. And in order to obviate, we believe that the amendment is right in that sense * * * that is, if we amend the draft so that it should read as follows: 'All cases contesting the election, etc.,' so that the judges of the Electoral Commission will limit themselves only to cases in which there has been a protest against the returns."

No pudo haberse concebido jamás la peregrina, fantástica idea de que el "draft" enmendado dejaba a la Asamblea Nacional la facultad de enjuiciar la "elección, actas y cualificaciones de los miembros" contra los cuales no existiera ninguna protesta ante la Comisión Electoral, por la sencilla razón de que ello engendraría las siguientes anomalías: (a) la creación de dos jueces: uno, para credenciales no protestadas—la Asamblea Nacional o Congreso; y otro, para credenciales protestadas—la Comisión o Tribunal Electoral; (b) en un momento dado, una mayoría sin escrúpulos, viendo peligrar el poder en sus manos después de unas elecciones reñidísimas, podría dar un golpe de mano mediante la estratagema de hacer que sus candidatos derrotados se inhiban de protestar ante el Tribunal Electoral a fin de dar lugar a que el Congreso actúe directamente sobre el caso, con la mira de ajusticiar a los candidatos minoritarios triunfantes bajo la guillotina de lo que el cinismo de los descreidos ha llamado *justicia política* de las mayorías; (c) ocurriría la paradoja de que las credenciales no protestadas estarían en peor situación que las protestadas, porque mientras estas últimas tendrían el beneficio de una justicia de verdad, la *justicia judicial* del Tribunal Electoral, aquéllas caerían bajo la *justicia política* de las mayorías, sedientas de sangre adversaria. Es indudable que, como hemos dicho en otra parte de esta disidencia, la Asamblea Constituyente no podía ser parte en un juego infantil como éste; y el Delegado Roxas, con su seriedad, con su bien conocida madurez política, con su devoción a la causa de la libertad y democracia, de ningún modo podía ser corresponsable de un precepto constitucional que pudiera dar lugar a tan tremendas anomalías. Y ¿qué decir del Delegado Rafols? ¿Cómo se puede concebir que, con sus tristes reminiscencias de la *justicia política* de las mayorías, diera su patrocinio a una enmienda que pudiera producir tales consecuencias?

Para remachar la tesis de que cada cámara de nuestro Congreso todavía retiene la facultad de determinar "la elección, las actas y las cualificaciones de sus miembros" en casos en que no hay protesta, la mayoría propone en su

opinión el siguiente ejemplo: "Es elegido por un distrito congresil un hombre que había servido previamente 10 años en las Prisiones de Bilíbid, por estafa. Como no tuvo contrincante (¡este hombre debía de ser muy popular!), ninguna protesta se formula contra su elección. Y naturalmente el Tribunal Electoral no adquiere jurisdicción sobre el caso, pues no hay 'contest' o controversia. Una vez informada del hecho ¿no puede la Cámara, *motu proprio*, suspender la toma de su juramento? ¿No puede la Cámara investigarle y después excluirle? Se observará que cuando un miembro de la Cámara suscita una cuestión respecto a las cualificaciones de otro, de ello no se sigue un pleito electoral, pues ninguno pretende sustituir a este último."

Parecería que estábamos excusados de replicar a este argumento por dos razones: primera, porque evidentemente el ejemplo propone un caso que es completamente distinto del que nos ocupa, pues los recurrentes no están acusados de estafa ni de nada que afecta a su carácter, y su caso, como ya hemos dicho, es de motivación enteramente electoral, es decir, relacionada con la forma cómo fueron elegidos que se dice viciada por actos de violencia y terrorismo de sus partidarios; y segunda, porque si bien es verdad que el ejemplo es meramente hipotético, plantea, sin embargo, un caso que puede perfectamente ocurrir y parecería que ni esta Corte ni ningún miembro suyo debería adelantar su opinión sobre semejante hipótesis susceptible de realizarse. Pero como del ejemplo se pretende hacer argumento *aquíles*, no tenemos más remedio que comentarlo y discutirlo.

Ante todo se deben deslindar bien los conceptos. El derecho o facultad de *expulsar* a un miembro de una cámara legislativa (Artículo VI, sección 10, ap. 3, Constitución de Filipinas) es una cosa bien diferente del derecho de *rehusar* la *admisión* de uno para ser miembro de dicha cámara. En esto último las cuestiones envueltas se refieren principalmente, tal vez exclusivamente, a las cualificaciones constitucionales de aquellos que se presentan para ser admitidos como miembros, o bien a la regularidad y legalidad de las elecciones en que fueron elegidos; mientras que en lo primero, esto es, en lo que toca a la expulsión, lo que da lugar a la acción es el carácter personal o conducta de la parte afectada (Willoughby, *On the Constitution of the United States*, tomo 1º, p. 611).

En el ejemplo que propone la mayoría, la condena por estafa no es cosa que guarda relación con las *cualificaciones constitucionales* del Congresista o Representante electo ni con la regularidad y legalidad de las elecciones en que salió victorioso, por cierto sin ningún contrincante. Es cosa que afecta a su carácter personal o conducta. Por tanto, no cabe discutir su derecho a ser admitido como miembro de la

cámara; él reúne las cualificaciones constitucionales (ciudadanía, edad, etc.) para ser Representante y la limpieza de su elección está admitida. Así que, parafraseando al Delegado Roxas, la "presentación de su credencial de que ha sido elegido, es bastante para que sea admitido como miembro." Pero ¿la condena por estafa? ¿No puede la cámara por este motivo investigarle y excluirle como elemento no deseable?—pregunta la mayoría. Esta es otra cuestión. Ya hemos visto que el derecho de admisión es una cosa, y el derecho de expulsión, otra. El derecho de expulsión, por mala conducta, lo tienen las cámaras independientemente del Tribunal Electoral. Ya lo dijo el Delegado Roxas, contestando al Delegado Labrador: la facultad de remover, en tratándose de la "elección, actas y cualificaciones de los miembros," la tiene la Comisión o Tribunal Electoral, previa protesta; la facultad de remover, por mala conducta, la tiene la Asamblea (Congreso).

Pero examinemos el ejemplo de la estafa que plantea la mayoría hasta sus últimas consecuencias. Willoughby dice que sobre este respecto el punto principal de controversia es si los actos de mala conducta objeto de queja deben ser sólo los subsiguientes a la elección y que afecten a la dignidad del Congreso y al debido desempeño de sus funciones, o deben ser también los anteriores. "Respecto de los actos de los miembros electos cometidos con anterioridad a su elección se ha argumentado fuertemente que las Cámaras no deben tenerlos en cuenta, pues se debe conceder que los electores tienen el derecho de elegir a quienes quieran para representarles en el Congreso, y se debe presumir que han tenido en cuenta el carácter y la conducta de aquéllos a quienes eligen."

"A disregard of the foregoing doctrine, it has been urged, operates as a denial to the States of a right or privilege constitutionally provided for them. Thus, we find James M. Beck, former Solicitor General of the United States, declaring: 'It seems too clear for argument, that each State has the right to select from its people any representative in the Senate (or the House) that it sees fit, irrespective of his intellectual or moral qualifications (provided he possesses the qualifications specified in the Constitution), * * *. A state may have selected a member of the Senate or secured his nomination by unworthy means. He may be intellectually unfitted for the high office, and his moral character may, in other respects, leave much to be desired. The people of the United States may justifiably think that the States has sent to Congress an unfit man, who could add nothing to its deliberations, and whose influence might well be pernicious. None the less, the State has the right to send him. It is its sole concern, and to nullify its choice is to destroy the basic right of a sovereign State, and amounts to a revolution.' (Willoughby, *idem*, pp. 611, 612)

"El primer precedente—añade el autor citado—de que, como base para expulsión, los actos cometidos antes de la elección no deben ser considerados, fué en el caso del Se-

nador Humphrey Marshall, en 1796, quien fué acusado de que había cometido perjurio. El Senado en este caso se negó a tomar jurisdicción para determinar si, de hecho, Marshall había sido reo de un delito, a pesar del hecho de que él pidió que el Senado investigase y determinase el caso" (*supra*, p. 612). Parece que en estos casos el criterio general y predominante es que el sufragio popular es como una especie de Jordán que lava con sus aguas purificadoras todos los pecados cometidos antes de la elección. Es como si al pueblo se le supusiera investido de la facultad suprema de indultar totalmente a sus favoritos por medio de la balota electoral.

Se insinúa que los recurridos tenían la facultad de adoptar la Resolución Pendatun en virtud del principio de que todo cuerpo legislativo tiene el poder inherente de adoptar reglas para su organización, funcionamiento y preservación. Se cita la práctica legislativa de que al inaugurararse un cuerpo deliberativo se forma un comité de credenciales que examina los certificados o títulos que presentan los miembros para su admisión. Dicho comité rinde su informe recomendando la aprobación o desaprobación de las credenciales. No puede sostenerse una tesis más peligrosa que ésta. Las cámaras legislativas son más, muchísimo más que una cámara de comercio, por ejemplo. Los legisladores son funcionarios constitucionales. Sus cualificaciones, la investidura y el ejercicio de su cargo, el término del mismo, están definidos y amparados por la Constitución mediante preceptos y disposiciones que operan como limitaciones constitucionales sobre el poder legislativo en general. Esos preceptos y disposiciones no se pueden enmendar o derogar mediante una ley ordinaria, mucho menos mediante una resolución simple como la del Senador Pendatun: para enmendarlos o derogarlos hace falta que se reforme la Constitución por los procesos que ella preceptúa. Hacer depender la admisión del legislador o la tenencia de su cargo de una resolución o acuerdo reglamentario es de lo más subversivo, pues le reduciría a una situación tan precaria y tan endeble que un mero empleado del servicio civil tendría más prestancia y más seguridad que él.

Se nos cita, sin embargo, el caso de *Barry vs. United States ex rel. Cunningham* (278-279 U. S., 867, 874; 73 Law. ed.), para demostrar que la Resolución Pendatun es válida y legal por entrar y recaer dentro del poder inherente del Senado para suspender a cualquier miembro, independientemente de la cuestión electoral. Hemos revisado cuidadosamente la sentencia citada y la hemos hallado inaplicable al presente caso. Es verdad que ella tiene cierta relación con el caso de Vare, candidato a Senador en Pennsylvania en las elecciones de 1926, a quien se le negó *prima*

facie el asiento mientras se efectuaba una investigación de alegadas irregularidades y prácticas corruptas cometidas para promover su nominación y su elección, entre ellas el haber gastado centenares de miles de dólares, el haber hecho promesas impropias e ilegales, etc., etc. Pero, aparte de que la suspensión del juramento y asiento de Vare caía perfectamente dentro de los poderes expresos e inherentes del Senado Americano como "único juez de la elección, actas y calificaciones de sus miembros," sólo muy incidental y colateralmente se habla de esto en el caso de Barry. La única y verdadera cuestión planteada en este caso era la de si a un tal Cunningham se le podía arrestar, mediante orden del Senado, y traerle a la barra para contestar a ciertas preguntas sobre la procedencia de ciertos fondos gastados en la nominación y elección de Vare. La Corte Suprema Federal dijo que sí, que esto caía dentro de los *poderes judiciales* del Senado. "Generally—dice la Corte—the Senate is a legislative body, exercising in connection with the House *only* the power to make laws. But it has had conferred upon it by the Constitution certain powers which are not legislative but judicial in character. Among these is the power to judge of the elections, returns and qualifications of its members. That power carries with it authority to take such steps as may be appropriate and necessary to secure information upon which to decide concerning elections" (Barry, *supra*, 871). Y al final de la sentencia la Corte sienta la siguiente afirmación que es muy significativa para el presente caso: "Here the question under consideration concerns the exercise by the Senate of an indubitable power; and if judicial interference can be successfully invoked it can only be upon a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process of law. That condition we are unable to find in the present case" (Barry, *supra*, 874). De suerte que, bien mirado, el asunto de Barry hasta es un argumento en favor de la jurisdicción de esta Corte Suprema para conocer y enjuiciar la Resolución Pendatun, para determinar si con ella se ha infringido o no la Constitución.

Se arguye que los recurridos no hicieron más que actuar sobre un informe rendido por la Comisión sobre Elecciones en obediencia a un mandato constitucional. En el informe se recitaban ciertos hechos y se sentaban conclusiones sobre alegados actos de terrorismo y violencia que podían afectar a la elección de los recurrentes. Se dice que la Resolución Pendatun no es sino la reacción, la respuesta de los recurridos a dicho informe; que éstos tenían absoluta discreción sobre el particular; que ello entraba dentro de sus poderes políticos y no era revisable por el departamento judicial. Para contestar ésto nos bastará repetir que la

Resolución Pendatun es algo más que el ejercicio de un poder político y discrecional: es una usurpación de poderes constitucionales pertenecientes a otro organismo constitucional; y para demostrarlo no necesitamos reproducir los argumentos ya extensamente expuestos.

Por lo demás, el discutido informe de la Comisión sobre Elecciones no tiene el valor ni alcance que le atribuyen. Ese informe no podía autorizar ni justificar ninguna acción que como la Resolución Pendatun tuviese el efecto de privar a los recurrentes de sus asientos en el Senado, siquiera temporalmente. El documento sometido por la Comisión sobre Elecciones que tiene verdadero valor constitucional y legal, que tiene fuerza obligatoria, es su proclama declarando electos a los recurrentes. Esa proclama impone a los recurrentes el deber *ministerial* de recibir y aceptar a los recurrentes como miembros del Senado hasta que el Tribunal Electoral diga otra cosa. ¿Cómo un informe, que ni siquiera es el resultado de una investigación propia, sino que está basado en otros informes de fuera, podía tener la trascendencia que se le ha dado, tomando pie del mismo para una sacudida seísmica de tales proporciones como es la suspensión de los derechos de tres miembros electos del Senado y siete miembros electos de la Cámara de Representantes? Ni la imaginación más libre y errática en la Asamblea Nacional pudo haberse figurado jamás este efecto a cuenta de esa cláusula inofensiva de la Constitución que manda a la Comisión sobre Elecciones presentar un informe después de cada elección al Jefe Ejecutivo y al Congreso.

La acción sobre ese informe no puede ir más allá de los límites que confinan cada poder. El Ejecutivo, por ejemplo, investigaría los abusos e irregularidades de los funcionarios encargados de ejecutar y hacer cumplir la Ley Electoral en cumplimiento de su mandato constitucional de ejecutar las leyes y de hacer que éstas se ejecuten fielmente (Constitución de Filipinas, artículo VII, secciones 7 y 10); y el Congreso estudiaría y consideraría reformas a la ley con vista de dicho informe, o bien crearía inmediatamente el Tribunal Electoral para despachar sin demora las protestas sobre elecciones legislativas. El Ejecutivo no podría, por ejemplo, so pretexto de tremendas irregularidades y anomalías expuestas en el informe sobre elecciones locales y provinciales, mandar suspender el juramento de algún concejal, alcalde o gobernador provincial electo, puesto que esto sería una usurpación y una invasión de la jurisdicción de los tribunales de justicia.

De todo lo antedicho resulta evidente que, resolviendo la primera cuestión propuesta, la Resolución Pendatun objeto de controversia es ilegal, es anticonstitucional y es, por tanto, insostenible.

"Segunda cuestión.—A la luz de nuestra Constitución y de nuestras leyes ¿tiene este Tribunal Supremo jurisdicción y competencia para conocer, enjuiciar y decidir el asunto?"

Los recurrentes invocan nuestra jurisdicción pidiendo un remedio a que, según ellos, tienen derecho bajo la Constitución y la ley. Alegan que son Senadores electos y, por tanto, funcionarios constitucionales de Filipinas, pues el Senado es cuerpo constitucional; que han sido debidamente proclamados por la Comisión sobre Elecciones bajo las disposiciones de la Ley No. 725 y, por tanto, tienen derecho por ministerio de la Constitución y de la ley a ocupar sus asientos en el Senado con todos los derechos, prerrogativas y privilegios anejos al cargo; que, sin embargo, los recurridos, o más bien una mayoría de ellos, han aprobado una resolución—la Resolución Pendatun—por la cual se les priva de sus asientos; que dicha resolución infringe la Constitución y la ley; por tanto, piden dictemos sentencia "declarando enteramente nula y de ningún valor la citada resolución, y prohibiendo consecuentemente a los recurridos y a cada uno de ellos a impedir a los recurrentes a continuar en sus asientos en el Senado de Filipinas y a ejercer libremente sus cargos como Senadores, y prohibiéndoles igualmente a realizar cualquier otro procedimiento ulterior para ejecutar la resolución citada." ¿Podemos negarnos a asumir la jurisdicción que se invoca? ¿Hay alguna manera de evadir la cuestión, inhibiéndose este Tribunal de declarar si es o no verdad que se han infringido la Constitución y la ley, y de conceder el remedio pedido si ha habido tal infracción? La comodidad, la línea de menor resistencia hubiera sido por el lado de la inacción, de la inhibición. Nos damos perfecta cuenta de la tremenda responsabilidad que supone el mantener la armonía entre los poderes del Estado. Es parte de la prudencia y sabiduría de los gobernantes el evitar en todo lo posible cualquier ocasión de conflicto entre dichos poderes, recordando siempre que si las instituciones son entidades abstractas, por ende anestésicas, insensibles, los hombres están hechos de arcilla animada y ya no son tan impasibles como las instituciones. Pero hemos hallado que en el presente caso nuestro deber de actuar, y de actuar positivamente, tiene la fuerza de un imperativo categórico. Nuestra jurisdicción está escrita en la Constitución, se halla reafirmada en la ley. En el Título VIII de la Constitución (sobre la judicatura) está declarada tanto implícita como expresamente la facultad judicial de resolver y decidir casos constitucionales; y en la regla 67 del Reglamento de los Tribunales hallamos la implementación procesal de esa jurisdicción y competencia.

Puede decirse que en este respecto nuestra Constitución es una edición mejorada de la Constitución federal de los Estados Unidos. Como se sabe, la llamada facultad ju-

dicial de revisar la Constitución en controversias propiamente planteadas no se ha la concedida expresamente en la magna carta americana. Ha sido el genio audaz de sus juristas, particularmente del gran Marshall, el que arrancó esa facultad de las penumbras de la Constitución (*Marbury vs. Madison* [1803], 1 Cranch, 137) contribuyendo ello grandemente, según opinión general de los críticos tanto nacionales como extranjeros, a fortalecer y estabilizar las instituciones políticas de América. Aprovechando la experiencia americana hemos escrito expresamente en nuestra Constitución lo que en América no era más que doctrina judicial o jurisprudencia.

Se dice, sin embargo, con todo énfasis, con todo vigor, que aún admitiendo que los recurridos, actuando como mayoría del Senado, hayan infringido la Constitución al aprobar la Resolución Pendatun y hacerla efectiva, con todo la judicatura, la judicatura filipina no tiene jurisdicción para intervenir en el caso, bajo el principio de la separación de poderes que informa nuestra Constitución. Se arguye que los tres poderes del Estado son iguales; que ninguno de ellos es superior al otro; que cada poder puede interpretar la Constitución a su modo y cuando así lo hace ningún otro poder puede ni debe entrometerse y revisar su interpretación; que el Senado es el único juez de sus actos y si algún ciudadano sale agraviado por algún alegado atropello a sus derechos constitucionales, su recurso no está en acudir al poder judicial o al poder ejecutivo, sino en apelar directamente al pueblo en la época de elecciones, en los comicios, empleando el arma civil por excelencia del ciudadano—la balota; y, finalmente, que el poder judicial no es un “cúralo todo,” una especie de Don Quijote que con la lanza en ristre pretenda enderezar todos los entuertos.

Como se ve, nos llaman a decidir cuestiones de tremenda importancia para el desenvolvimiento constitucional en este país; lo que resolvamos puede trascender mucho más allá del promedio de tiempo en que puede durar nuestra existencia. Puede decirse sin inmodestia que grandes decisiones del futuro—empleamos la palabra no en su sentido exclusivamente judicial—dependerán de cómo resolvamos esas cuestiones formidables que se nos plantean hoy.

En parte, el argumento expuesto es correcto y acertado. No se puede discutir que los tres poderes del Estado son iguales e independientes entre sí; que ninguno de ellos es superior al otro, mucho menos el poder judicial que entre los tres es el menos fuerte y el más precario en medios e implementos materiales. Tampoco se puede discutir que bajo la Constitución cada poder tiene una zona, una esfera de acción propia y privativa, y *dentro* de esa esfera un cúmulo de facultades que le pertenecen exclusivamente; que *dentro* de esa esfera y en el uso de esas facultades cada

poder tiene absoluta discreción y ningún otro poder puede controlar o revisar sus actos so pretexto de que alguien los cuestiona o tacha de arbitrarios, injustos, imprudentes o insensatos. Pero la insularidad, la separación llega sólo hasta aquí. Desde Montesquieu que lo proclamó científicamente hasta nuestros días, el principio de la separación de poderes ha sufrido tremendas modificaciones y limitaciones. El consenso doctrinal hoy es que la teoría es sólo relativa y que la separación de poderes queda condicionada por una mecánica constitucional—la mecánica de los frenos y cortapisas. (Willoughby, *On the Constitution of the United States*, tomo 3, págs. 1619, 1620, 2.^a edición). Como queda dicho, cada poder es absoluto *dentro* de la esfera que le asigna la Constitución; allí el juego de sus facultades y funciones no se puede coartar. Pero cuando se sale y extravasa de esa esfera invadiendo otras esferas constitucionales, ejerciendo facultades que no le pertenecen, la teoría de la separación ya no le ampara, la Constitución que es superior a él, le sale al encuentro, le restringe y le achica dentro de sus fronteras, impidiendo sus incursiones anti-constitucionales. La cuestión ahora a determinar es si bajo nuestro sistema de gobierno hay un mecanismo que permite restablecer el juego normal de la Constitución cuando surgen estos desbarajustes, estos conflictos que podríamos llamar de fronteras constitucionales; también es cuestión a determinar si cuando surgen esos conflictos, un ciudadano sale perjudicado en sus derechos, el mismo tiene algún remedio expedito y adecuado bajo la Constitución y las leyes, y quién puede concederle ese remedio. Y con ésto llegamos a la cuestión básica, cardinal en este asunto.

Nuestra opinión es que ese mecanismo y ese remedio existen—son los tribunales de justicia. “The very essence of the American conception of the separation of powers is its insistence upon the inherent distinction between law-making and law-interpreting, and its assignment of the latter to the judiciary, a notion which, when brought to bear upon the Constitution, yields judicial review” (Corwin, *The Twilight of the Supreme Court*, p. 146). En Angara *contra Comisión Electoral (supra)* dijimos que “prescindiendo del tipo inglés y otros tipos europeos de gobierno constitucional, los redactores de nuestra Constitución han adoptado el tipo americano en donde el departamento judicial interpreta y da efecto a la Constitución escrita. En algunos países que han rehusado seguir el ejemplo americano, se han insertado disposiciones en sus constituciones prohibiendo a los tribunales que ejerciten su facultad de interpretar la ley fundamental. Esto se toma como un reconocimiento de lo que de otro modo sería la regla de que a falta de prohibición expresa los tribunales de justicia están obligados a asumir lo que legalmente es deber suyo”

(*Angara contra Comisión Electoral*, 63 Jur. Fil., 173, 174).

En el famoso asunto de *Marbury vs. Madison*, *supra*, el Tribunal Supremo de los Estados Unidos, por boca de su gran *Chief Justice* John Marshall, en términos inequívocos definió y explicó las facultades de la judicatura para poner en vigor la Constitución como la suprema ley del país, y declaró que "es terminantemente de la competencia y deber del departamento judicial el decidir cual es la ley que rige."

"The reasoning of Webster and Kent is substantially the same. Webster says: 'The Constitution being the supreme law, it follows of course, that every act of the legislature contrary to the law must be void. But who shall decide this question? Shall the legislature itself decide it? If so, then the Constitution ceases to be legal and becomes only a moral restraint for the legislature. If they, and they only, are to judge whether their acts be conformable to the Constitution, then the Constitution is advisory and accessory only, not legally binding; because, if the construction of it rest wholly with them, their discretion, in particular cases, may be in favor of very erroneous constructions. Hence the courts of law, necessarily, when the case arises, must decide upon the validity of particular acts.' Webster, Works, Vol. III, 30." (Willoughby on the Constitution of the United States, Vol. 1, 2nd edition, pp. 4, 5.)

En realidad, esta cuestión no es nueva en esta jurisdicción. El precedente más inmediato que tenemos en nuestra jurisprudencia es el asunto de *Angara contra Comisión Electoral* ya tantas veces citado (1936). Por primera vez se planteaban y discutían ante esta Corte cuestiones importantísimas resultantes de la Constitución del Commonwealth que acababa de promulgarse. Se trataba precisamente de deslindar las zonas constitucionales ocupadas por la Asamblea Nacional y la Comisión Electoral; es decir que, fundamentalmente, casi, casi las mismas cuestiones que ahora se plantean ante nosotros. La teoría de la separación de poderes—el *leit-motif* de la presente controversia—se analizó y discutió allí hasta en sus últimas implicaciones y consecuencias. Brevemente expuestos los hechos eran los siguientes: José Angara había sido proclamado Representante electo por uno de los distritos de Tayabas. Al inaugurararse la Asamblea Nacional su acta fué confirmada por este cuerpo juntamente con las de otros Representantes contra quienes no se habían formulado protestas. El acta de Angara no estaba protestada entonces. Algunos días después Pedro Insua, su contrincante, presentó una protesta ante la Comisión Electoral que acababa solamente de constituirse. Escudado tras el hecho de que su acta ya había sido confirmada por la Asamblea Nacional, Angara vino a esta Corte planteando una acción originaria para que se expediera un mandamiento de inhibición prohibiéndole a la Comisión Electoral que siguiera conociendo de la protesta. Esta Corte aceptó el reto asumiendo jurisdicción sobre el caso, procediendo a desempeñar su alta función de intér-

prete de la Constitución y haciendo lo que gráficamente llamó deslinde de facultades constitucionales. Reconociendo y estableciendo firmemente la jurisdicción exclusiva de la novísima Comisión Electoral sobre controversias relativas a la elección de miembros de la Asamblea Nacional, esta Corte denegó el recurso de prohibición. Llevando las cosas por la tremenda, la Asamblea Nacional, bajo la teoría de la separación de poderes, pudo haber ignorado la decisión de esta Corte, pudo haber pasado por encima de la Comisión Electoral conservándole el asiento a Angara, ya que el acta de éste había sido confirmada por ella cuando aun no había protesta. No lo hizo. La Constitución, casi entre los pañales aún de su cuna, se calvó gracias a la compostura de todo el mundo, saliendo ilesa de la prueba, rodeada de grandes prestigios. Las conclusiones y pronunciamientos de la Corte por boca del ponente el Magistrado Laurel, parecen estereotipados para el caso que nos ocupa y para el presente momento histórico con todas sus crisis; así que los vamos a reproducir en toda su integridad a continuación:

"La separación de poderes es un principio fundamental de nuestro sistema de gobierno. Se establece, no por disposición expresa, sino por división real trazada en nuestra Constitución. Cada departamento del Gobierno tiene conocimiento exclusivo de las materias que caen dentro de su jurisdicción, y es supremo dentro de su propia esfera. Pero del hecho de que los tres poderes han de conservarse separados y distintos no se sigue que la Constitución se propuso que fueran absolutamente irrestringidos e independientes unos de otros. La Constitución ha dispuesto un sistema elaborado de frenos y cortapisas para asegurar coordinación en los trabajos de los varios departamentos del Gobierno. Por ejemplo, el Jefe Ejecutivo, bajo nuestra Constitución, es hasta tal punto erigido en un freno para el poder legislativo que se requiere su asentimiento en la aprobación de las leyes. Sin embargo, esto está sujeto al ulterior freno de que un proyecto de ley puede convertirse en ley no obstante la negativa del Presidente de aprobarlo, por medio de una votación de dos tercios o tres cuartos, según sea el caso, de la Asamblea Nacional. También tiene el Presidente facultad de convocar a la Asamblea cuando lo crea conveniente. Por otra parte, la Asamblea Nacional funciona como un freno sobre el Ejecutivo, en el sentido de que es necesario su consentimiento, por medio de la Comisión de Nombramientos, en el nombramiento de ciertos funcionarios; y es esencial la conformidad de todos sus miembros para la conclusión de tratados. Además, en su facultad de determinar qué tribunales, que no sea el Tribunal Supremo, se habrán de establecer, para definir su competencia, y de destinar fondos para su sostenimiento, la Asamblea Nacional rige al departamento judicial en cierto grado y medida. La Asamblea ejerce, también, la facultad judicial de conocer de recusaciones. Y la judicatura, a su vez, con el Tribunal Supremo por árbitro final, frena con efectividad a los demás departamentos en el ejercicio de su facultad de determinar la ley, y de aquí que pueda declarar nulos los actos ejecutivos y legislativos que contravengen la Constitución.

"Pero, en esencia, la Constitución ha delineado con mano firme y en términos enérgicos la asignación de facultades a los departamentos ejecutivo, legislativo y judicial del Gobierno. La superposición y el

entrelazamiento de funciones y deberes de los varios departamentos, sin embargo, a veces hace difícil decir precisamente dónde termina uno y empieza otro. En tiempos de intranquilidad social o excitación política, las grandes piedras angulares de la Constitución son susceptibles de ser olvidadas o anuladas, si no desatendidas enteramente. En casos de conflicto, el departamento judicial es el único organismo constitucional que puede ser llamado para determinar el propio delinde de facultades entre los varios departamentos y entre las unidades integrales o constituyentes de los mismos.

"Como cualquier producto humano, nuestra Constitución carece, desde luego, de perfección y perfectibilidad; pero, en tanto en cuanto estaba en manos de nuestro pueblo disponerlo así, obrando por medio de sus delegados, ese instrumento, que es expresión de su soberanía, por limitada que sea, ha establecido un gobierno republicano destinado a obrar y funcionar como un conjunto armónico, bajo un sistema de frenos y cortapisas, y con sujeción a las limitaciones y restricciones que se disponen en dicho instrumento. La Constitución señala, en un lenguaje nada incierto, las restricciones y limitaciones de los poderes y organismos gubernamentales. *Si estas restricciones y limitaciones fueran traspuestas, sería inconcebible que la Constitución no hubiera dispuesto un mecanismo por el cual pudiera encuadrarse el curso del Gobierno por los canales constitucionales*, pues entonces la distribución de poderes sería mera palabrería, el bill de derechos meras expresiones sentimentales, y los principios de buen gobierno meros apotegmas políticos. Ciertamente, las limitaciones y restricciones que comprende nuestra Constitución son *reales*, como debe serlo en cualquier Constitución. En los Estados Unidos en donde no se encuentra ninguna concesión constitucional expresa en su Constitución, la posesión de este poder moderador de los tribunales, por no decir ya nada de su origen histórico y desenvolvimiento aquí, ha sido dejado en reposo por la aquiescencia popular por un período de más de un siglo y medio. En nuestro caso, este poder moderador está concedido, si no expresamente, por deducción tácita del artículo 2, Título VIII, de nuestra Constitución.

"La Constitución es una definición de las facultades del Gobierno. ¿Quién es el llamado a determinar la naturaleza, propósito y alcance de esas facultades? La Constitución misma ha dispuesto el organismo de la judicatura como el medio racional. Y, cuando la judicatura media para determinar los linderos constitucionales, no mantiene ninguna superioridad sobre los otros departamentos; en realidad no anula ni invalida un acto de la Legislatura, sino que solamente asevera la solemne y sagrada obligación a ella asignada por la Constitución de determinar pretensiones incompatibles de autoridad dictada de la Constitución, y de establecer para las partes en una controversia actual los derechos que ese instrumento asegura y garantiza a las mismas. Esto, a la verdad, es todo lo que va implícito en la expresión "*supremacía judicial*", que propiamente es la facultad de revisión judicial bajo la Constitución. Aun entonces, este poder de revisión judicial está limitado a casos y controversias reales, que se ha de ejercitar después de que las partes han tenido plena libertad de hacerse oír, y está, además, limitado a la cuestión constitucional suscitada, o a la misma *lis mota* planteada. Cualquier tentativa de abstracción, sólo conduciría a la dialéctica, y obstaculizaría las cuestiones legales, y a conclusiones estériles que nada tendrían que ver con los hechos reales. Circunscrita de este modo a sus funciones, la judicatura no se ocupa de resolver cuestiones sobre la cordura, justicia o conveniencia de la legislación. Aun más, los tribunales conceden la presunción de constitucionalidad a las leyes aprobadas por la Legislatura, no solamente porque se presume que ésta acata

la Constitución, sino, también, porque la judicatura, en el fallo de actuales casos y controversias, debe reflejar la sabiduría y la justicia del pueblo, tal y como se han expresado por medio de sus representantes y por los departamentos ejecutivo y legislativo del Gobierno.

"Pero por mucho que pudiéramos postular sobre los frenos internos de poderes que dispone nuestra Constitución, debe, con todo, recordarse que, según las palabras de James Madison, el sistema mismo no es 'el principal paladín de la libertad constitucional * * * el pueblo, que es el autor de esta bendición, debe, también, ser su guardián * * * sus ojos deben estar siempre alerta para señalar, su voz para delatar * * * agresiones a la autoridad de su constitución.' En último análisis, pues, el triunfo de nuestro Gobierno en los años venideros deberá ser puesto a prueba en el crisol de las mentes y en los corazones de los filipinos, más bien que en las salas de consultas y cámaras de audiencia de los tribunales." (Angara *contra Comisión Electoral*, 63 Jur. Fil., 169, 170, 171.)

Algo más se puede añadir sobre el caso de Angara. Allí la Corte descartó sin vacilaciones la posibilidad de un vacío, de un estado jurídico de inerme impotencia frente a conflictos constitucionales, sentando la siguiente conclusión: "En nuestro caso, la índole de la actual controversia revela la necesidad de un *árbol constitucional último* que determine la incompatibilidad de facultades entre dos organismos creados por la Constitución. Si fuéramos a rehusar el conocer de la controversia ¿quién determinaría el conflicto? Y si se dejara sin decidir ni determinar el conflicto ¿no se crearía en sí un *vacio* en nuestro sistema constitucional que a la larga daría por resultado echar a perder toda la labor? El hacer estas preguntas es contestarlas. *Natura vacuum abhorret*, por lo que debemos evitar toda postración en nuestro sistema constitucional." No solamente esto—añadimos—sino que a toda costa debemos evitar que fuera de la legalidad se forme un "territorio de nadie" donde puedan germinar situaciones peligrosas y explosivas.

Pero además del caso de Angara tenemos en nuestra jurisprudencia otro precedente más inmediato todavía en apoyo de la tesis de la supremacía judicial en tratándose de interpretar la Constitución y de dirimir conflictos constitucionales; nos referimos al asunto de Carmen Planas, recurrente, *contra José Gil, Comisionado del Servicio Civil*, recurrido, decidido por este Tribunal Supremo el 18 de enero de 1939 bajo la ponencia del mismo Magistrado Laurel (38 Gaz. Off., No. 65, 1228-1234). Carmen Planas, siendo miembro de la Junta Municipal de Manila, publicó un artículo en *La Vanguardia* criticando duramente a ciertos funcionarios del Gobierno, entre ellos el Presidente de Filipinas Sr. Quezon, en relación con las elecciones de Diputados a la Asamblea Nacional celebradas el 8 de noviembre de 1938. Entre los fuertes cargos formulados por la artista contra los dioses del Olimpo oficial, figuraban los siguientes: que, no obstante el tácito interdicto impuesto por la Constitución al disponer que el Presidente de Fili-

pinas ejerciese su cargo por un solo período—6 años— sin reelección, situándosele de esta manera en las serenas alturas del Poder como un supremo árbitro, moderador y neutral, el Sr. Quezon intervino activamente en aquellas elecciones a favor de los nacionalistas poniendo en juego toda la enorme influencia de su cargo y aplastando así a los candidatos de la oposición; que toda la maquinaria del Gobierno se movilizó a favor de los candidatos nacionalistas, colocándose en la vanguardia de dicha movilización los miembros del Gabinete; y que no se escatimaron medios para asegurar el triunfo de los candidatos de la administración, el fraude y la corrupción inclusive. Al día siguiente de haberse publicado este artículo sensacional, la Sra. Planas recibió una carta firmada de la siguiente manera: "By authority of the President: Jorge B. Vargas, Secretary to the President," en donde se le decía: "Por la presente se le instruye que comparezca ante el Comisionado del Servicio Civil, sola o acompañada por un abogado, a las 9 de la mañana, Noviembre 22, para probar las declaraciones hechas por usted. El que tales cargos no se puedan sostener o no se pruebe que se han hecho de buena fe, será considerado como razón suficiente para su suspensión o destitución del cargo."

La Sra. Planas objetó a la investigación recusando al Comisionado del Servicio Civil. Éste, sin embargo, insistió en proseguir la investigación y fué entonces cuando ella vino ante este Tribunal Supremo pidiendo un mandamiento de prohibición contra el Comisionado, por los siguientes fundamentos, entre otros: que bajo la Constitución y las leyes que protegen la libertad de palabra y de expresión, ella tenía derecho a formular la censura de que se trata como libre ciudadana de un país democrático; que, en efecto, ella escribió el artículo no como concejal sino como persona particular; que como funcionario ella solamente podía ser investigada y exigírselle responsabilidad por motivo de prevaricación, mala conducta o infracción relacionada con su cargo, y éste no era el caso; que, suponiendo que el artículo en cuestión fuera libeloso o contuviera algo por lo cual la articulista pudiera ser criminalmente responsable, el Código Penal y el Procedimiento Criminal señalan el modo de hacer efectiva esa responsabilidad ante los tribunales de justicia. El Procurador General, al impugnar el recurso, alegó entre otros fundamentos que este Tribunal, bajo "el principio de la separación de poderes establecido por la Constitución, no tenía jurisdicción para revisar las órdenes del Jefe Ejecutivo de que se trata, las cuales son de carácter puramente administrativo," citándose en apoyo de la impugnación las sentencias de este Tribunal en los asuntos de Severino *contra* El Gobernador General, Abueva *contra* Wood y Alejandrino *contra* Quezon, citados en otra parte de esta disidencia.

Esta Corte desestimó la objeción y resolvió que tenía jurisdicción y competencia sobre el caso, diciendo que si bien “*los actos del Ejecutivo ejecutados dentro de los límites* de su jurisdicción son sus actos oficiales y los tribunales no dirigirán ni controlarán la acción ejecutiva en tales casos” (la regla es la de no-intervención), sin embargo, “de esta premisa legal no se sigue necesariamente que *no podemos inquirir la validez o constitucionalidad* de sus actos cuando éstos se cuestionan y atacan en un procedimiento legal apropiado.” “Por lo que respecta a la judicatura—añadió esta Corte—si bien es verdad que ella no agarra “ni la espada ni la bolsa,” es por arreglo constitucional el *órgano llamado para deslindar las fronteras constitucionales*, y al Tribunal Supremo está encomendada expresamente o por necesaria implicación la obligación de determinar en procedimientos apropiados la validez o constitucionalidad de cualquier tratado, ley, ordenanza, orden ejecutiva o regulación.”

Es verdad que esta Corte denegó el recurso interpuesto por la Sra. Planas, pero no por el fundamento de la falta de jurisdicción alegado por el Procurador General, sino porque llegó a la conclusión de que la orden de investigación cuestionada caía *dentro de los límites constitucionales de la jurisdicción del Presidente*, y, por tanto, era válida, constitucional y legalmente. He aquí los pronunciamientos pertinentes de la Corte, los cuales no tienen desperdicio y reafirman con todo vigor la doctrina de la supremacía judicial en materia de deslindes constitucionales, establecida en el asunto de Angara, a saber:

“The Solicitor General, under the last paragraph (par. 10) of his amended answer, raises the question of jurisdiction of this court over the acts of the Chief Executive. He contends that ‘under the separation of powers marked by the Constitution, the court has no jurisdiction to review the orders of the Chief Executive, evidenced by Annex A and Annex C of the petition, which are of purely administrative character.’ Reliance is had on the previous decisions of this court: Severino *vs.* Governor-General ([1910], 16 Phil., 366); Abueva *vs.* Wood ([1924], 45 Phil., 612); and Alejandrino *vs.* Quezon ([1924], 46 Phil., 83). Although this is the last point raised by the Government in its answer, it should, for reasons that are apparent, be first to be considered. If this court does not have jurisdiction to entertain proceedings, then, the same should be dismissed as a matter of course; otherwise, the merits of the controversy should be passed upon and determined.

“It must be conceded that *the acts of the Chief Executive performed within the limits of his jurisdiction* are his official acts and courts will neither direct nor restrain executive action in such cases. The rule is noninterference. *But from this legal premise, it does not necessarily follow that we are precluded from making an inquiry into the validity or constitutionality of his acts when these are properly challenged in an appropriate legal proceeding.* The classical separation of governmental powers, whether viewed in the light of the political philosophy of Aristotle, Locke, or Montesquieu, or of the

postulations of Mañini, Madison, or Jefferson, is a relative theory of government. There is more truism and actuality in interdependence than in independence and separation of powers, for as observed by Justice Holmes in a case of Philippine origin, we cannot lay down 'with mathematical precision and divide the branches into watertight compartments' not only because 'the great ordinances of the Constitution do not establish and divide fields of black and white' but also because 'even the more specific of them are found to terminate a penumbra shading gradually from one extreme to the other.' (*Springer vs. Government* ([1928], 277 U. S., 189; 72 Law. ed., 845, 852.) As far as the judiciary is concerned, which it holds 'neither the sword nor the purse' it is by constitutional placement the organ called upon to allocate constitutional boundaries, and to the *Supreme Court* is entrusted expressly or by necessary implication the obligation of determining in appropriate cases the constitutionality or validity of any treaty, ordinance, or executive order or regulation (section 2 (1), Article VIII, Constitution of the Philippines.) In this sense and to this extent, the judiciary restrains the other departments of the government and this result is one of the necessary corollaries of the 'system of checks and balances' of the government established.

"In the present case, the President is not a party to the proceeding. He is neither compelled nor restrained to act in a particular way. The Commissioner of Civil Service is the party respondent and the theory is advanced by the Government that because an investigation undertaken by him is directed by authority of the President of the Philippines, this court has no jurisdiction over the present proceedings instituted by the petitioner, Carmen Planas. The argument is farfetched. A mere plea that a subordinate officer of the government is acting under orders from the Chief Executive may be an important averment, but is neither decisive nor conclusive upon this court. Like the dignity of his high office, the relative immunity of the Chief Executive from judicial interference is not in the nature of a sovereign passport for all the subordinate officials and employees of the Executive Department to the extent that at the mere invocation of the authority that it purports the jurisdiction of this court to inquire into the validity or legality of an executive order is necessarily abated or suspended. The facts in *Severino vs. Governor-General* (*supra*), *Abueva vs. Wood* (*supra*), and *Alejandrino vs. Quezon*, (*supra*), are different, and the doctrines laid down therein must be confined to the facts and legal environment involved and whatever general observations might have been made in elaboration of the views therein expressed but which are not essential to the determination of the issues presented are mere *obiter dicta*.

"While, generally, prohibition as an extraordinary legal writ will not issue to restrain or control the performance of other than judicial or quasi-judicial functions (50 C. J., 658), its issuance and enforcement are regulated by statute and in this jurisdiction it may issue to any inferior tribunal, corporation, board, or person, whether exercising functions judicial or ministerial, whose acts are without or in excess of jurisdiction. (Sections 516 and 226, Code of Civil Procedure.) The terms 'judicial' and 'ministerial' used with reference to 'functions' in the statute are undoubtedly comprehensive and include the challenged investigation by the respondent Commissioner of Civil Service, which investigation if unauthorized and is violative of the Constitution as contended is *a fortiori* without or in excess of jurisdiction. The statutory rule in this jurisdiction is that the writ of prohibition is not confined exclusively to courts or tribunals to keep them within the limits of their own jurisdiction and to prevent them from encroaching upon the jurisdiction of other tribunals, but

will issue, in appropriate cases, to an officer or person whose acts are without or in excess of his authority. Not infrequently, 'the writ is granted, where it is necessary for the orderly administration of justice, or to prevent the use of the strong arm of the law in an oppressive or vindictive manner, or a multiplicity of actions.' (Dimayuga and Fajardo vs. Fernandez [1922], 43 Phil., 304, 307; Aglipay vs. Ruiz [1937], 35 Off. Gaz., 1264.) This court, therefore, has jurisdiction over the instant proceedings and will accordingly proceed to determine the merits of the present controversy."

Se arguye, sin embargo, que de permitirse la intervención judicial para deslinde constitucional o para dirimir conflictos constitucionales, ello tiene que ser en *casos o procedimientos apropiados*. Se dice que en el asunto de Angara la intromisión judicial era procedente y justificada porque en él la parte litigante era sólo la Comisión (Tribunal) Electoral, como recurrida, y la Asamblea Nacional, como uno de los tres poderes del Estado, no era ni recurrente ni recurrida. Por analogía se insinúa también que en el asunto de Planas *contra* Gil el Presidente de Filipinas no era parte directa sino tan sólo el Comisionado del Servicio Civil.

El argumento es de esos que, por su sutileza, provocan una batalla de argucias hasta sobre el filo de una navaja, como se suele decir. Es verdad que en el caso de Angara la Asamblea Nacional no era parte directa porque de su inclusión no había necesidad; pero ¿cambia ello el aspecto de la cuestión? ¿Se puede negar que allí había conflicto de jurisdicciones constitucionales entre la Asamblea y la Comisión Electoral y que cuando, a instancia de parte, se invocó y pidió la intervención de esta Corte, la misma intervino y se declaró competente para hacer el deslinde constitucional y finalmente adjudicó la zona disputada a la Comisión (Tribunal) Electoral? Supóngase que una mayoría de los miembros de la Asamblea Nacional, pasando por encima de la sentencia de esta Corte, hubieran insistido en hacer efectiva la confirmación del acta de Angara y le hubieran dado un asiento en los escaños de dicha Asamblea, despojando a la Comisión Electoral de su derecho de conocer y enjuiciar la protesta de Insúa ¿hubiera ello modificado la fase fundamental del caso, haciendo constitucional lo que era anticonstitucional, y hubiera perdido este Tribunal Supremo la jurisdicción para entender del asunto? Indudablemente que no: la infracción de la Constitución sería la misma, tal vez mayor y más grave; y la jurisdicción de este Tribunal para intervenir en el conflicto, más obligada y más forzosa, a fin de mantener inviolada la suprema Ley de la nación. En otras palabras, la inhibición judicial no sería una actitud más correcta, más sana y más prudente tan sólo porque la infracción de la Constitución fuera más audaz y más agresiva. Aquí no habría medias tintas: *to be or not to be*, que dijo Hamlet.

Y lo propio se puede decir del asunto de Planas *contra* Gil. Es verdad que el Presidente no estaba nombrado como parte directa en el litigio. Pero ¿qué más da? ¿No se trataba de una orden ejecutiva expedida por directa autorización del Presidente? Y así como se pudo dictar una sentencia a favor del recurrido por el fundamento de que con la expedición de la orden cuestionada el Presidente *no se había extralimitado* de sus facultades constitucionales y estatutorias, *a sensu contrario* también se hubiera podido dictar una sentencia adversa, es decir, si se hubiese tratado de un acto ejecutivo que cae fuera de las facultades conferidas al Presidente por la Constitución; y en este último caso la sentencia no hubiera sido menos derogatoria tan sólo porque hubiese estado dirigida contra el Comisionado del Servicio Civil que actuaba por mandato directo del Presidente. El que está a las maduras, también debe estar a las duras * * *.

Se nos dice, sin embargo, que el caso de Angara no es la cita pertinente aplicable, sino el de Alejandrino *contra* Quezon (46 Jur. Fil., 87, 151), decidido en 1924. El Senador Alejandrino agredió a otro miembro del Senado fuera de la sala de sesiones de resultas de un debate aclarado. Con motivo del incidente la mayoría aprobó una resolución suspendiendo a Alejandrino por un año y privándole, además, de todas sus prerrogativas, privilegios y emolumentos durante dicho período de tiempo. Alejandrino planteó ante esta Corte una acción originaria pidiendo la expedición de una orden de *mandamus* o interdicto para que se le repusiera en su cargo con todos los derechos y privilegios anexos. Se denegó el recurso por el fundamento de que esta Corte carecía de jurisdicción para conocer del asunto.

Un somero examen del caso Alejandrino demuestra, sin embargo, que no tiene ninguna paridad con el que nos ocupa. Es evidente que el Senado tenía el derecho de castigar a Alejandrino dentro de sus facultades disciplinarias provistas por la ley orgánica—la Ley Jones. Esta era una facultad discrecional y constitucional cuyo ejercicio no podía ser regido ni revisado por ningún otro poder. Como hemos dicho más arriba, cada poder es árbitro único y exclusivo *dentro* de su esfera constitucional. (Planas *contra* Gil, 38 Gac. Of., No. 65.) Ninguno tiene derecho a entrometerse en la forma como se las arregla allí. Pero nuestro caso es completamente diferente. Aquí los recurridos o la mayoría de los Senadores han ejercido una facultad que constitucionalmente no les pertenece. Por tanto, han traspasado los confines de su predio constitucional, invadiendo otro; por tanto, la Resolución Pendatun es completamente *ultra vires*. Y no es necesario que repitamos los

argumentos ya extensamente desarrollados acerca de este punto.

Todas las autoridades que se citan en la decisión de la mayoría en el asunto de Alejandrino tienen la *misma ratio decidendi*, el mismo *leit motif*. Se trata de casos en que los actos discutidos recaían dentro de las facultades constitucionales del poder envuelto en el litigio; de ahí la negativa del departamento judicial a intervenir, a entrometerse.

Y si examinamos los precedentes locales sobre la materia, vemos que la veta de la jurisprudencia tiene el mismo tipo, la misma naturaleza. En el asunto de Barcelón *contra* Baker y Thompson (5 Jur. Fil., 89) se declaró legal lo hecho por el Gobernador General por la razón de que caía dentro de sus poderes políticos o ejecutivos bajo la constitución.

Lo propio se hizo en los siguientes asuntos:

(*Forbes contra Chuoco Tiaco y Crossfield*, 16 Jur. Fil., 535; *Asunto de McCulloch Dick*, 38 Jur. Fil., 43, 225, 240; *Severino contra Gob. General y Junta Provincial de Negros Occ.*, 16 Jur. Fil., 369; *Abueva contra Wood*, 45 Jur. Fil., 648.)

Al negarse esta Corte a revisar lo actuado por el Jefe Ejecutivo en los casos citados, ha tenido indudablemente en cuenta el siguiente pronunciamiento del *Chief Justice Marshall* en el citado asunto de *Marbury vs. Madison*: "The Constitution itself endows the President with certain important political powers in the exercise of which he is to use his own *discretion*, and is accountable only to his country in his political character, and to his own conscience." De modo que, en último resultado, en tales casos se ha reconocido que el Ejecutivo ha ejercido solamente sus poderes constitucionales; nada hay en ellos que sugiera la idea de la inmunidad e irresponsabilidad por una infracción de la Constitución.

Contra la pretensión de que el departamento judicial no puede revisar los procedimientos de una Cámara legislativa en casos de extra!imitación constitucional y dictar la orden correspondiente, militan varios precedentes en la jurisprudencia americana. El más conocido y celebrado entre ellos es el asunto de *Kilbourn vs. Thompson* (102-105 U. S., 377, 392; 26 Law. ed., second edition, [1881]). En 1876 la Cámara de Representantes de los Estados Unidos aprobó una resolución disponiendo que se investigara cierta compañía en la que el gobierno federal, por medio del Secretario de la Marina, había hecho depósitos improvidentes de dinero público. Se decía que la compañía estaba en quiebra y el gobierno federal era uno de los mayores acreedores. Se alegaba, además, en la resolución que los tribunales eran impotentes para hacer algo en el caso y proteger el interés público. Se nombraba en la resolución un comité de cinco Representantes para efectuar la investigación.

En el curso de la investigación se le citó al recurrente Hallet Kilbourn *subpœna duces tecum* para que produjera ante el comité ciertos documentos y contestase ciertas preguntas. Kilbourn se negó a hacer lo uno y lo otro. Kilbourn fué entonces arrestado por orden del Speaker, y como quiera que siguió rehusando contestar las mismas preguntas formuladas ahora por el Speaker y producir los documentos requeridos por el comité, la Cámara aprobó otra resolución disponiendo que Kilbourn fuese otra vez arrestado y detenido en la cárcel del Distrito de Columbia hasta que se aviniese a cumplir la orden contenida en las resoluciones de la Cámara de Representantes. Kilbourn no sólo insistió en su negativa, sino que formuló una queja contra el sargento de armas de la Cámara y los cinco miembros del Comité por "trespass for false imprisonment," acusándoles de haberle arrancado de su casa mediante fuerza y detenido por 45 días en la cárcel. Elevado el asunto al Tribunal Supremo Federal, éste declaró que la resolución de investigación era anticonstitucional; que la investigación no tenía por objeto una acción legislativa sino que era más bien para una inquisición de carácter judicial; así que la Corte declaró lo siguiente:

"In looking to the Preamble and Resolution under which the committee acted, before which Mr. Kilbourn refused to testify, we are of opinion that the House of Representatives *not only exceeded the limit of its own authority*, but assumed a power which could only be properly exercised by another branch of the government, because the power was in its nature clearly judicial.

"The Constitution declares that the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain. If what we have said of the division of the powers of the government among the three departments be sound, this is equivalent to a declaration that *no judicial power is vested in the Congress or either branch of it, save in the cases specifically enumerated to which we have referred.*
* * *

"We are of opinion, for these reasons, that the Resolution of the House of Representatives authorizing the investigation, *was in excess of the power conferred on that body by the Constitution*; that the committee, therefore had no lawful authority to require Mr. Kilbourn to testify as a witness beyond what he voluntarily chose to tell; that the orders and resolutions of the House, and the warrant of the Speaker, under which Mr. Kilbourn was imprisoned, are, in like manner, *void for want of jurisdiction in that body*, and that *his imprisonment was without any lawful authority.*" (*Kilbourn vs. Thompson*, United States Supreme Court Reports, Vols. 102-105, pp. 387, 388, 389.)

Finalmente, la Corte dispuso que la causa contra Thompson, el sargento de armas, se devolviera al tribunal de origen para ulteriores procedimientos. Se estimó el sobreseimiento con respecto a los miembros del comité bajo el principio de la libertad parlamentaria de debate que les hacía in-

munes. A propósito de esto último son muy significativas las siguientes palabras de la Corte:

"It is not necessary to decide here that there may not be things done, in the one House or other, of an extraordinary character, for which the members who take part in the act may be held legally responsible. If we could suppose the members of these bodies so far to forget their high functions and the noble instrument under which they act as to imitate the Long Parliament in the execution of the Chief Magistrate of the Nation, or to follow the example of the French Assembly in assuming the functions of a court for capital punishment, we are not prepared to say that such an utter perversion of their powers to a criminal purpose would be screened from punishment by the constitutional provision for freedom of debate." (*Idem*, p. 392.)

Además de la precedente cita, varias decisiones de los más altos tribunales pueden citarse en apoyo de la doctrina de que "todos los funcionarios, departamentos o agencias gubernamentales están sujetos a restricción judicial cuando obran *fueras* de sus facultades, legales o constitucionales, y por virtud de dicha extralimitación privan a un ciudadano de sus derechos" (Osborn *vs.* United States Bank, 9 Wheaton [U. S.], 739; Board of Liquidation *vs.* McComb, 92 [U. S.], 531; United States *vs.* Lee, 106 U. S., 196; Virginia Cases, 114 U. S., 311; Regan *vs.* Farmers & Co., 154 U. S., 362; Smith *vs.* Ames, 169 U. S., 466; *Ex parte* Young, 209 U. S., 123, Philadelphia Co. *vs.* Stimson, 223 U. S., 605.)

Respecto de la facultad judicial para expedir, en casos apropiados, órdenes coercitivas dirigidas a funcionarios de la Legislatura, hay en la jurisprudencia americana una buena copia de autoridades. He aquí algunas de ellas:

*** * En el asunto *Ex parte* Picket (24 Ala., 91) se libró el mandamiento contra el Presidente de la Cámara de Representantes para obligarle a que certificara al Interventor de Cuentas Públicas la cantidad a que tenía derecho el recurrente como miembro de la Cámara como compensación por millaje y dietas. En el asunto de State *vs.* Elder (31 Neb., 169), se libró el mandamiento para obligar al Presidente de la Cámara de Representantes para que abriera y publicara los resultados de la elección general. En el asunto de State *vs.* Moffitt (5 Ohio, 350) se declaró que procedía expedir un *mandamus* contra el Presidente de la Cámara de Representantes para obligarle que certificara la elección y nombramiento de funcionarios. En el asunto de Wolfe *vs.* McCaull (76 Va., 87) se expidió el mandamiento para obligar al archivero de las nóminas de la Cámara de Representantes a que imprimiera y publicara un proyecto de ley aprobado por la Legislatura y, a solicitud, que facilitara copia del mismo propiamente certificada. (Véanse también los asuntos de Kilbourn *vs.* Thompson, 103 U. S., 168; State *vs.* Gilchrist, 64 Fla., 41; People *vs.* Marton, 156 N. Y., 136.)" (*Alejandrino contra Quezon*, 46 Jur. Fil., 148, 149.)

De lo expuesto resulta evidente que esta Corte tiene facultad para dictar la sentencia y expedir el interdicto que se solicita. La orden irá dirigida no contra el Senado de Filipinas, entidad abstracta que nada ha hecho contra la

Constitución. La orden restringente irá dirigida contra los recurridos en cuanto ellos intentan hacer efectiva una resolución que es ilegal, que es anticonstitucional, lo mismo que se hizo en el asunto de Kilbourn. Se les restringe y cohíbe como se les restringiría y cohíbiría si, por ejemplo, en vez de la Resolución Pendatun, hubieran aprobado otra resolución mandando a la cárcel a los recurrentes hasta que el Tribunal Electoral resuelva la cuestión de sus actas. ¿Habrá alguien que sostuviera que si en tal caso vinieran a esta Corte los afectados para pedir el adecuado remedio contra el atropello, esta Corte no podría concederlo bajo la teoría de la separación de poderes? Luego la cuestión se reduce a una de grado, de tamaño de la transgresión constitucional; pero es obvio que nuestra jurisdicción y competencia no queda condicionada por el volumen de la transgresión. ¿Y quién diría en tal caso que el Senado de Filipinas ha sido el sujeto de la orden de interdicto, con grave desdoro de sus altos prestigios como uno de los tres poderes del Estado?

Puesto que la acción en el presente caso va dirigida no contra el Senado como corporación o institución, sino contra una mayoría de sus miembros como *personas*, como *individuos*, si bien en su concepto de Senadores, dicho se está que tenemos competencia para conceder el recurso, no sólo por las razones constitucionales ya expuestas, sino porque está claramente reconocida y definida dicha competencia en nuestros estatutos: anteriormente en los artículos 226 y 516 de la Ley No. 190 (Cód. de Proc. Civ.), y ahora en la regla 67, secciones 2 y 4, Reglamento de los Tribunales. Estas disposiciones legales prescriben que el mandamiento de inhibición (prohibition) puede expedirse a "una corporación, junta, o *persona*, en el ejercicio de sus funciones judiciales o ministeriales, siempre que se demuestre que carecían de competencia o se han extralimitado de ella en las actuaciones que hayan practicado" (*Planas contra Gil, ut supra*). Sin embargo, se arguye que los recurridos como Senadores no ejercen funciones judiciales ni ministeriales, sino legislativas; luego la regla no es aplicable a ellos. Pero es evidente que en el presente caso la función de que se trata no es de carácter legislativo sino ministerial; apenas es necesario decir que la Resolución Pendatun no es un acto legislativo. Bajo la Constitución y los estatutos el derecho de un miembro electo del Congreso a ser admitido y a ocupar su asiento es de naturaleza ministerial, imperativa. La Ley No. 725 del Commonwealth, aprobada por el pasado Congreso para implementar la Ley Electoral con vista a las elecciones nacionales del pasado 23 de Abril, dice en parte lo siguiente:

"ART. 11. La Comisión de Elecciones hará el escrutinio de los resultados para Senadores tan pronto como se hayan recibido las actas de

cada provincia y ciudad, pero no después del veinte de mayo de mil novecientos cuarenta y seis. Serán proclamados elegidos los dieciséis candidatos inscritos que obtuvieron el mayor número de votos para el cargo de Senador. En caso de que apareciere de los resultados del escrutinio de los votos para Senadores que dos o más candidatos han obtenido el mismo número de votos para el décimo sexto puesto, la Comisión de Elecciones, después de hacer constar este hecho en el acta correspondiente, celebrará otra sesión pública, previa notificación con tres días de antelación a todos los candidatos empatados, para que ellos o sus representantes debidamente autorizados puedan estar presentes si así lo desearen, en la cual procederá al sorteo de los candidatos empatados y proclamará al candidato que saliere favorecido por la suerte. *El candidato así proclamado tendrá derecho a tomar posesión del cargo del mismo modo que si hubiere sido elegido por pluralidad de votos.* Acto seguido, la Comisión de Elecciones levantará acta del procedimiento seguido en el sorteo, de su resultado y de la proclamación subsiguiente. Se enviarán copias certificadas de dicha acta por correo certificado al Secretario del Senado y a cada uno de los candidatos empatados."

"ART. 12. * * * The candidates for Member of the House of Representatives and those for Senator who have been *proclaimed* elected by the respective Board of Cavassers and the Commission on Elections *shall assume office* and shall hold regular session for the year 1946 on May 25, 1946" (las bastardillas son nuestras.)

Si bajo estas disposiciones legales los recurrentes tienen el derecho de asumir el cargo, es obvio que los demás Senadores, entre ellos los recurridos, tienen el correlativo deber ministerial de no impedirles el ejercicio de ese derecho, o dicho de otro modo, el correlativo deber ministerial de admitirles para que tomen posesión de sus cargos a la sola presentación de sus credenciales que en este caso viene a ser la proclama expedida por la Comisión sobre Elecciones declarándolos electos (Delegado Roxas, debates en la Asamblea Constituyente, *ut supra*). Se dice que la frase *shall assume office*, con ser imperativa, no impone una obligación específica de admitir a cualquier miembro electo, sino que es tan sólo un mandamiento, un *directive* al legislador electo para que tome posesión de su cargo inmediatamente, como si un candidato triunfante que, es de presumir, se presentó voluntariamente candidato y a lo mejor gastó una fortuna para promover su elección, necesitara de ese *úkase* legislativo para asumir su oficio. Pero concedamos por un momento, *arguendo*, que esa disposición legal no tiene más que el significado de una especie de conscripción civil, todavía cabe preguntar: ¿cómo podría el legislador electo asumir forzosamente (*shall*) su cargo, si, por otro lado, una mayoría de sus compañeros en cíncalve tuvieran la facultad discrecional—que puede degenerar en arbitraría—de negarle el asiento, siquiera sea con carácter temporal? ¿No sería ello claramente un absurdo, un contrasentido? Luego la conclusión lógica y natural es que esa frase imperativa es de *doble vía*, esto es, tanto para admitir al miembro electo como para que éste asuma el cargo.

Se apunta el temor de que la intervención judicial en el caso que nos ocupa pueda dar lugar a una grave consecuencia—la de que una orden adversa sea desobedecida por los recurridos, suscitándose por tal motivo un conflicto de poderes. Pero, aparte de que el deber—máxime si está impuesto por la Constitución y las leyes—se tiene que cumplir rigurosamente por penoso que fuese sin consideración a las consecuencias, parece impropio e injusto presumir que los recurridos sean capaces, en un momento dado, de desplazar las cuestiones que entraña la presente controversia del elevado nivel en que deben discutirse y resolverse, en medio de una atmósfera de absoluta impersonalidad y objetividad, libre de los miasmas de la pasión y suspicacia. Y no se diga, fulanizando ostensiblemente la cuestión, que cuando la judicatura, en el apropiado ejercicio de su facultad de interpretar la Constitución y los estatutos, dicta un fallo adverso a ciertos intereses y a ciertos hombres pertenecientes a otro poder del Estado, humilla y empequeñece con ello a ese poder, colocándolo en condición inferior y subalterna. En los grandes conflictos y disputas sobre la cosa pública lo que, en verdad, empequeñece y deslustra no es el contratiempo y revés que se sufre—incidente inevitable en toda noble lid por la razón, la verdad y la justicia—sino la falta de esa serena dignidad, de ese sentido sobrio de propia inhibición y propio dominio para aceptar y sufrir el revés, de todo eso que es la mejor piedra de toque de la madurez política y de las virtudes públicas en un régimen de carácter popular y democrático. Los hombres van y vienen, pasan con sus miserias y sus disputas en la interminable caravana del tiempo; las instituciones quedan, y eso es lo que importa salvar a toda costa por encima de las pasiones y caprichos transeúntes del momento.

Si esta Corte tiene, según la Constitución, facultad para conceder el remedio solicitado, es de suponer que los recurridos acatarán el fallo que se dicte, pues son hombres de orden y de ley, y serán los primeros en dar el ejemplo de cumplir los mandatos de la Constitución, interpretados y aplicados por la judicatura; pero si—lo que para nosotros es imposible que ocurra—escudándose tras sus privilegios, llegaren al extremo de cometer desacato, que cada cual asuma su responsabilidad ante su conciencia, ante el país y ante la historia. Esta Corte habrá cumplido solamente con su deber, sin miedo y sin favor, y en la forma mejor que le haya sido dable hacerlo en la medida de sus luces y alcances.

En esta jurisdicción tenemos un precedente típico, claro y terminante de orden coercitiva dirigida por el departamento judicial al departamento ejecutivo del gobierno. Nos referimos al asunto de Concepción *contra* Paredes (42 Jur. Fil., 630) en el cual se trataba de una solicitud de mandamiento de inhibición ordenando al recurrido Secretario de

Justicia que desistiera de poner en vigor las disposiciones de la Ley No. 2941 que exigía a los jueces de primera instancia que echasen suertes cada cinco años para el cambio de distritos. Esta Corte declaró que la ley popularmente conocida por ley de la "lotería judicial" era anticonstitucional. Se concedió, por tanto, el mandamiento de prohibición, haciéndose definitivo el interdicto preliminar expedido.

Sólo nos queda por considerar el argumento deprimente, desalentador de que el caso que nos ocupa no tiene remedio ni bajo la Constitución ni bajo las leyes ordinarias. A los recurrentes se les dice que no tienen más que un recurso: esperar las elecciones y plantear directamente la cuestión ante el pueblo elector. Si los recurrentes tienen razón, el pueblo les reivindicará eligiéndoles o elevando a su partido al poder, repudiando, en cambio, a los recurridos o a su partido. Algunas cosas se podrían decir acerca de este argumento. Se podría decir, por ejemplo, que el remedio no es expedito ni adecuado porque la mayoría de los recurridos han sido elegidos para un período de seis años, así que no se les podrá exigir ninguna responsabilidad por tan largo tiempo. Se podría decir también que en una elección política entran muchos factores, y es posible que la cuestión que se discute hoy, con ser tan férvida y tan palpitante, quede, cuando llegue el caso, obscurcida por otros "issues" más presionantes y decisivos. También se podría decir que, independientemente de la justicia de su causa, un partido minoritario siempre lucha con desventaja contra el partido mayoritario.

Pero, a nuestro juicio, la mejor contestación al argumento es que no cabe concebir que los redactores de la Constitución filipina hayan dejado en medio de nuestro sistema de gobierno un peligroso vacío en donde quedan paralizados los resortes de la Constitución y de la ley, y el ciudadano queda inerme, impotente frente a lo que él considera flagrante transgresión de sus derechos. Los redactores de la Constitución conocían muy bien nuestro sistema de gobierno—sistema presidencial. Sabían muy bien que éste no tiene la flexibilidad del tipo inglés—el parlamentario. En Inglaterra y en los países que siguen su sistema hay una magnífica válvula de seguridad política; cuando surge una grave crisis, de esas que sacuden los cimientos de la nación, el parlamento se disuelve y se convocan elecciones generales para que el pueblo decida los grandes "issues" del día. Así se consuman verdaderas revoluciones, sin sangre, sin violencia. El sistema presidencial no tiene esa válvula. El período que media de elección a elección es inflexible. Entre nosotros, por ejemplo, el período es de seis años para el Senado, y de cuatro años para la Cámara de Representantes y los gobiernos provinciales y municipales. Solamente se celebran elecciones especiales para cubrir vacantes que ocu-

rnan entre unas elecciones generales y otras. Se comprenderá fácilmente que bajo un sistema así es harto peligroso, es jugar con fuego el posibilitar situaciones donde el individuo y el pueblo no puedan buscar el amparo de la Constitución y de las leyes, bajo procesos ordenados y expeditos, para proteger sus derechos.

En resumen, diremos lo siguiente:

Tenemos una Constitución escrita que representa el genio político y social de nuestro pueblo, que encarna nuestra historia, nuestras tradiciones, nuestra civilización y cultura influida por las más grandes civilizaciones y culturas conocidas en el mundo. Esa Constitución se escribió no sólo para el Commonwealth, sino para la República: está hecha para perdurar y sobrevivir a todas las crisis y vicisitudes. Sobrevivió casi milagrosamente a la peor de éstas—la ocupación japonesa. Es un formidable instrumento de libertad y democracia. Su modelo más cercano es la Constitución americana, pero en ciertos respectos es una superación del modelo. Uno de sus aspectos más originales y progresivos es indudablemente la creación del Tribunal Electoral. Esta reforma constituye el valiente reconocimiento de una dura realidad, al propio tiempo que un enérgico remedio.

Pero en las constituciones la letra no es el todo, ni siquiera lo principal. Lo importante, lo fundamental es el espíritu, el carácter del pueblo; son las prácticas, las costumbres, los hábitos políticos que vivifican e implementan la letra escrita que es inorgánica e inerte. Exceptuando el paréntesis trágico de la guerra, nuestra Constitución lleva unos ocho años de vigencia. En ese breve período de tiempo se ha formado en su derredor una limitada jurisprudencia, encaminada a robustecerla y expandirla como instrumento de libertad y democracia. Los casos de Angara y Planas, tan copiosamente comentados en esta modesta disidencia, son típicamente representativos de esa magnífica tendencia. La cuestión ahora es si ésta ha de poder continuar sin estorbos, sin trabas, o ha de sufrir un serio revés en su marcha ascendente. Nuestro sentir es que se debe permitir el ordenado desenvolvimiento de la Constitución en toda su anchura, bajo los amplísimos auspicios de la libertad, en términos y perspectivas que hagan de ella la formidable herramienta de democracia y justicia que debe ser.

¡Ojalá el resultado del presente asunto no sea parte para estorbar ese desenvolvimiento!

Case dismissed.

DECISIONS OF THE COURT OF APPEALS

[No. 596-R. March 31, 1947]

CIRIACO CHUNACO, plaintiff and appellant, *vs.* PARTAB SINGH, ISIDRA ALANO, CONSOLACION RILLO, WENCESLAWA RILLO, MARIA RILLO, JOSE RILLO, JESUS RILLO, PEDRO RILLO, and ARTEMIO RILLO, defendants and appellees.

[No. 597-R. March 31, 1947]

CIRIACO CHUNACO, plaintiff and appellant, *vs.* ISIDRA ALANO and JOSE ANTOQUIA, defendants and appellees. MARIA RILLO, CONSOLACION RILLO, WENCESLAWA RILLO, JOSE RILLO, JESUS RILLO, PEDRO RILLO and ARTEMIO RILLO, intervenors and appellees.

1. OWNERSHIP; EVIDENCE; ADMISSION MADE BY A PERSON, INADMISSIBLE AGAINST HER CHILDREN.—Admissions made by a party in another case may be competent evidence against herself, but are inadmissible against her children, heirs of her deceased husband.
2. ATTACHMENT; EXECUTION SALE; PURCHASER IN EXECUTION SALE ONLY SUCCEEDS TO RIGHT, TITLE OF JUDGMENT DEBTOR.—A purchaser on execution only succeeds to the right, title, interest, and claim of the judgment debtor in the property attached, (sec. 24, rule 39, Rules of Court). A judgment debtor who had joined in the execution of a deed of sale of a certain piece of property, has no more right or interest thereafter and no right or interest was acquired thereto by a sale on attachment and execution of said property.
3. PLEADING AND PRACTICE; JUDGMENT; COMPROMISE, VALIDITY OF.—A compromise is not required to be signed by the parties themselves; all that is demanded is that their lawyer be authorized to enter into the compromise (sec. 21, rule 127, Rules of Court). Such authority is presumed when he has signed it and the same is approved by the court. (Sec. 69, pars. (m) and (q), Rules of Court.)
4. ID.; ID.; ID.; COLLATERAL ATTACK; BY WHOM AND UPON WHAT GROUND IT CAN BE MADE.—It is a general principle of law that collateral attack can only be made on ground of fraud (34 C. J., 511) and by the parties aggrieved thereby.

APPEAL from a judgment of the Court of First Instance of Camarines Sur. Buenaventura, J.

The facts are stated in the opinion of the court.

Bausa & Ampil for appellant.
Jose M. Peñas for appellees.

LABRADOR, J.:

The subject of the above-entitled civil cases is a certain parcel of residential land situated in the barrio of San Miguel, municipality of Iriga, Camarines Sur, and a

building of strong materials erected thereon. It appears from the agreement entered into by the parties at the joint hearing of these cases that the land and house were sold on September 29, 1930, by the spouses Sinforeso Rillo and Isidra Alano to Partab Singh for the sum of ₱700, with the right on the part of the vendors to repurchase the same within the period of eleven months from the date of the sale. It was also agreed that the vendors could occupy the house without paying rentals before the expiration of the period for the repurchase, and that they could also occupy it after the expiration of said period upon payment of an amount to be agreed upon as rents. The deed of sale, which was presented in the trial as Annex A, was registered in the office of the register of deeds of Camarines Sur on September 30, 1930.

The period of redemption having expired without the vendors having exercised the right to repurchase, Partab Singh instituted a civil action (civil case No. 5912) in the Court of First Instance for the recovery of the ownership of the land. During the pendency of this case, Sinforeso Rillo died and his children were substituted in his place. The parties then submitted a compromise agreement (*convenio de transacción*), and the court rendered a decision in accordance therewith, declaring Partab Singh the exclusive owner of the land (the said compromise agreement and decision are attached to the record as Annexes J and I, respectively). Both the agreement and the decision bear date September 30, 1936. In the agreement it was specifically provided that Partab Singh was to sell the property to any one of the defendants for the sum of ₱300, which was to be payable in three equal installments every six months from the date of the approval of the agreement. Pursuant to this agreement, Partab Singh sold the property to defendant Consolacion Rillo on April 2, 1938, and the deed of sale executed for that purpose was registered in the office of the register of deeds on April 2, 1938 (Annex D).

Aside from the said civil case, Partab Singh also instituted an action for detainer in the justice of the peace court of Iriga, Camarines Sur, on or about September 2, 1931 (Exhibit 1). Judgment in the said detainer case having been rendered in favor of the defendants, plaintiff appealed to the Court of First Instance. The case was registered as No. 5541 of the said court, but was dismissed on October 26, 1933 (Exhibit 2). This case was dismissed on the ground that the real issue between the parties was the right of possession and that, therefore, the justice of the peace court did not have jurisdiction to take cognizance of the cause. In the decision mention is made of another

civil case No. 5074, between the same parties, in which case the plaintiff claimed that the land, subject of the action, had been sold with the right to repurchase by the defendants, but in which the defendants claimed that the contract which they entered into with the plaintiff was an equitable mortgage.

It also appears that, in the meantime, a civil action for the recovery of money was instituted in the justice of the peace court of Pili, Camarines Sur by the plaintiff in these cases, Ciriaco Chunaco, against Isidra Alano, and that judgment having been rendered therein against Isidra Alano, the property now in question was sold on execution on May 31, 1934, to the judgment creditor Ciriaco Chunaco. The property not having been repurchased within one year, a deed of sale was executed by the sheriff on July 24, 1935, and this deed was registered in the office of the register of deeds on July 17, 1936 (Annex E). It further appears that purchase at public auction was placed in possession of the property (Annex F); however, in a subsequent action for detainer prosecuted by Ciriaco Chunaco (civil case No. 6589) the sheriff testified that the children of Rillo and Alano, the defendants in that case, refused to deliver the possession of the land. Based on these facts, Ciriaco Chunaco instituted civil case No. 6580 on September 7, 1937, alleging that he is the owner of the residential land and of the building of strong materials erected thereon; that the defendants in this case did not file a third party claim when the property was attached on execution; that the period for the redemption of the property had expired, but notwithstanding that fact the defendants have been occupying and continue occupying the property; that in civil case No. 5912 the parties therein, including the defendants in this case, confabulated with each other so that Partab Singh may be declared exclusive owner of the property, but that said decision is null and void because it was based on a compromise agreement fraudulently executed by the parties solely for the purpose of prejudicing the plaintiff; and that by the acts of the defendants plaintiff has been prejudiced. In their answer, the defendants allege as a special defense that Isidra Alano was never the owner or possessor of the property in question; that the allegation of fraud and confabulation is false and malicious; that the other defendants surmised Rillo had been in exclusive possession of the property as owner from the time of the death of their father.

Civil case No. 6589 was originally instituted by Ciriaco Chunaco against Isidra Alano and Jose Antoquia on August 17, 1936, in the justice of the peace court of Iriga, Ca-

marines Sur. On August 19, 1936, an amended complaint was filed in the same case in the same court. In this amended complaint, it is alleged that the plaintiff is the owner of the property by purchase at public auction; that on February 8, 1936, by virtue of an order of the court, the plaintiff was placed in possession of the said property, which the defendants then occupied; and that notwithstanding the above facts and the order of the court, defendants illegally detained the possession of the property, depriving the plaintiff of the rents thereof, which are estimated at the sum of ₱15 per month. Prior to the filing of the amended complaint on September 1, 1936, the heirs of Sinforoso Rillo, namely, Maria, Jose, Consolacion, Artemio, Wenceslawa, Jesus, and Pedro, filed a petition in intervention and an answer in intervention. The action was dismissed by the justice of the peace court, and so plaintiff appealed the case to the Court of First Instance of Camarines Sur, the case being registered in this court as civil case No. 6589.

Civil cases Nos. 6580 and 6589 were tried jointly by the Court of First Instance of Camarines Sur. At the time of the trial the parties entered into an agreement, the contents of which have already been set forth above. No witnesses were presented, but only the documents where the different transactions and proceedings in relation to the land appeared. Judgment was rendered by the Court of First Instance in 1939 dismissing both complaints. Against this judgment an appeal has been prosecuted by the perfection of a record on appeal. On this appeal plaintiff-appellant Ciriaco Chunaco assigns various errors, among which are (1) that the lower court erred in not declaring Isidra Alano the owner of the property prior to the purchase thereof by Ciriaco Chunaco; (2) in not annulling the compromise agreement of the parties in civil case No. 5912 entitled Partab Singh *vs.* Sinforoso Rillo, et al.; (3) in not declaring Partab Singh only a mere mortgagee; and (4) in not declaring Ciriaco Chunaco the owner of the property by virtue of the auction sale conducted by the provincial sheriff of Camarines Sur.

In support of the first error, it is claimed that there is no better evidence of the ownership of Isidra Alano than her admission in court in civil case No. 5074. In answer to this argument, it is enough to state that while the supposed admissions may be competent evidence against Isidra Alano herself, the same are certainly inadmissible against her children, heirs of her deceased husband Sinforoso Rillo. It is further contended that if the property had really belonged to Sinforoso Rillo, it can not be explained why Isidra Alano joined in the execution of the sale with right

to repurchase, Annex A. It is not necessary for this court to determine who owned the property, whether it was the husband or the wife, or both, for the reason that both of them executed the deed of sale with right to repurchase, Annex A. By virtue of this deed of sale, the title of Partab Singh to the property became complete and absolute on the expiration of the period provided for the repurchase, that is, on August 29, 1931. Such being the case, the attachment of the said property on execution, by virtue of the judgment of the justice of the peace court considering Isidra Alano as owner of the same, did not create or produce any right over said property in favor of the judgment creditor, the plaintiff herein, for a purchaser on execution only succeeds to the right, title, interest, and claim of the judgment debtor in the property attached (sec. 24, rule 39, Rules of Court). Since Isidra Alano had no more right to or interest in the property at the time of the attachment in 1933, because she had joined in the execution of the deed of sale Annex A, no right or title thereto was acquired by Ciriaco Chunaco by virtue of the sale on execution.

In so far as the second error above indicated is concerned (regarding the validity of the compromise agreement and decision in civil case No. 5912), it is contended that the fact that the other defendants in said civil case No. 5912 did not sign the compromise renders the decision null and void *ab initio*. We do not and we can not subscribe to this theory. A compromise is not required to be signed by the parties; all that is demanded is that the lawyer be authorized to enter into the compromise (sec. 21, rule 127, Rules of Court). And he having signed it and the same having been approved by the court, said authority is presumed (sec 69, pars. (m) and (q), rule 123, Rules of Court). Besides, it is a general principle of law that collateral attack can only be made on the ground of fraud (34 C. J., 511) and by the parties aggrieved thereby. There was no witness presented by the plaintiff to prove fraud, and from the documents submitted in the course of the hearing and mentioned in the agreement, there is nothing on which to base a finding that said agreement and decision were in fact secured through fraud. Chunaco, as a successor to the right or interest of Isidra Alano, can not complain that the other parties did not sign. Only those who did not sign can attack its validity on the ground of the absence of their conformity or signature. This second error must, therefore, be overruled.

As to the third error, it can be stated that appellant can not question the validity of the proceedings and judgment in civil case No. 5912, wherein Partab Singh was declared owner of the property (sec. 44, rule 39, Rules of

Court); that there was no oral testimony submitted to prove that the nature of the contract contained in Annex A is different from what it purports to be on its face; and that the actions instituted by Partab Singh to enforce his rights under the said deed lead to no other conclusion than that said deed is a real sale with right to repurchase. The third error, therefore, is also dismissed for lack of merit.

The answer to the fourth error is evident from the above conclusions of the court.

In view of the foregoing considerations, the court finds that the decision of the trial court is in accordance with the facts and the law, and the same is hereby affirmed, with costs in this instance against the appellant. So ordered.

Montemayor, Pres. J., and Concepcion, J., concur.

Judgment affirmed.

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[No. 205-R. April 8, 1947]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. THEODORE ENGLE and DOROTHY PRICE, defendants
and appellants.

1. CONCUBINAGE; CONDONATION, AS A DEFENSE; EVIDENCE; BURDEN OF PROOF OF CONDONATION LIES WITH THE DEFENSE.—In cases of concubinage, once the co-habitation or the illicit relation has been admitted or established, the *onus probandi* of the alleged consent or condonation lies on the defense, because this is an affirmative assertion that has to be proven. The burden of proof is not on the prosecution to show lack of consent or condonation. (*U. S. and Juan Antonio vs. Alcaraz et al.*, 11 Phil., 660.)
2. ID.; ID.; KNOWLEDGE OF CRIME, FIRST ELEMENT IN CONSENT OR CONDONATION; SILENCE NOT HELD AS ACQUIESCEANCE.—The first element in consent or condonation is knowledge of the crime (*Day v. Day*, 71 Kans. 385, 60 Pac. 974, 6 Ann. Cas. 169; etc.), for there can be no condonation without knowledge (*Van Wickle v. Van Wickle* (N. J.), 108 Atl. 761; *Laycock v. Laycock*, 52 Ore. 610, 98 Pac. 487; *Canning v. Canning* 87 Vt. 492, 89 Atl. 1988, Ann. Cas. 1916, C, 344). The silence of the aggrieved wife for over a year not to take steps against the accused cannot be construed as an act of acquiescence in the illicit relations between the accused and his concubine because she had no direct nor conclusive evidence of their illicit relations during the period indicated. Mere suspicions aroused in her mind, by seeing the two accused kissing each other, or riding together in automobiles, or going to the movies, bowling alleys and the waterfront, however strong they may be, do not constitute the type of evidence required to obtain the conviction of her husband and his paramour of the crime of concubinage.
3. ID.; ID.; MEANING OF "CONSENT" AS USED IN ARTICLE 344 OF THE REVISED PENAL CODE.—Condonation as a defense in this type of felony means that the offended party forgives the offense with full knowledge of the *delictum*, but only upon the condition that the offense be not repeated (*Neely v. Neely*, 179 Cal. 232, 176 Pac. 163; *Wade v. Wade* (Mo. App.) 229 S. E. 432; *Rogers*

v. Rogers 81 Wash. 502, 142 Pac. 1150). As condonation is forgiveness based upon the presumption and belief that the guilty party has repented, any subsequent acts of the offender showing that there was no repentance will not bar the prosecution of the offense even though condonation has been extended. As stated by the Supreme Court, the word "consent," used in article 344 of the Revised Penal Code, has no reference to the commission of the offense but relates to an express or implied acquiescence subsequent to the offense. (People *vs.* Guinucud et al., 58 Phil., 621.)

4. ID.; ID.; ANY ACT OF INFIDELITY SUBSEQUENT TO CONDONATION IS A NEW OFFENSE.—Any act of infidelity to the vows of marriage subsequent to the condonation constitutes a new offense that is subject to a criminal prosecution.

5. ID.; ID.; CONSENT; FAILURE TO FILE COMPLAINT ON TIME DOES NOT PROVE CONSENT.—One year delay of the wife to present her complaint does not prove that she gave her consent to the concubinage, between the accused and his concubine, considering the unsettled state of affairs in Leyte as a consequence of the Japanese occupation. (See Mortiga *vs.* Serna et al., 5 Phil., 34, 36.)

6. ID.; DEATH OF OFFENDED PARTY DOES NOT TERMINATE THE CASE.—In prosecutions for adultery, the death of the offended party during the pendency of the appeal does not warrant the dismissal thereof. The wife is entitled to the protection of her honor during her lifetime as well as after her death (art. 334, R. P. C.). By analogy, the death of the offended party in this case, does not terminate the case; the appeal should follow the regular course.

APPEAL from a judgment of the Court of First Instance of Leyte. Bayona, J.

The facts are stated in the opinion of the court.

Antonio V. Benedicto for appellants.
Assistant Solicitor-General Gianzon and *Solicitor Villamor* for appellee.

LIM, J.:

Upon a complaint filed by Luisa Brillantes Engle on 27 January 1944 Theodore Engle and Dorothy Price were convicted of the crime of concubinage by the Court of First Instance of Leyte. Theodore Engle was sentenced to suffer an imprisonment of 6 months and 1 day of *prisión correccional*, and Dorothy Price to 6 months of *destierro*, and to pay the costs.

On 14 June 1933, Luisa Brillantes was married to Theodore Engle before the Justice of the Peace of Palo, Leyte, establishing thereafter their residence in Tacloban, the provincial capital. Husband and wife were living happily together and had five children, until January 1940, when at a dance given on New Year's eve in the provincial auditorium, the wife caught the appellants kissing each other, taking advantage of the partial disguises they were wearing at the time. Since then, the appellants were seen together

riding in automobiles, going to the movies, bowling alleys and the water-front of Tacloban, and on some occasions Theodore spent his nights in the house of his co-accused, Dorothy Price. Luisa tried to stop and prohibit her husband from going with his co-accused but the former merely answered that she should mind her own business. On 27 May 1941, Luisa, taking advantage of the keys that her husband forgot in the house, opened his tool-box and there discovered hidden a bundle of love letters written by Theodore and Dorothy and a snapshot of the latter. These letters confirmed the suspicions that the wife entertained on the loyalty and fidelity of her husband. In one letter, Dorothy, after informing Theodore that she would be alone in her house, directly invited him to a tryst: "I'll stay home and wait for you." (Exhibit B-4.) In another letter written by Theodore to Dorothy, after telling her that he was missing her, her hair, her eyes, and her lips, in a romantic and suggestive manner and form, he closed the paragraph by a longing reminiscence: "I won't forget those beautiful nights with you, darling; if my wish could only be granted, then I would wish you to be back here again and be with you *always*," followed in the next paragraph by a revealing disclosure: "I'll be waiting, or can I sleep with you to night, how about it, O. K.?" (Exhibit B-6.)

Adding insult to injury, Theodore maltreated Luisa and inflicted upon her physical injuries which required medical assistance, when the latter refused to return this bundle of letters and picture. With this evidence in her hands, Luisa instructed her attorney to prepare a complaint for concubinage against Theodore and Dorothy, but upon the intervention of Dorothy's brother and sister, who were Luisa's good friends, and who promised to send Dorothy to Manila, Luisa's attorney held in abeyance the filing of the charge for concubinage. As Luisa noticed no improvement in the conduct of her husband and she was unable to stand any longer the indignities and maltreatment to which she was subjected much too often by her husband, she left for her mother's home in Abuyog, Leyte, taking along her five children. Theodore followed her immediately, and upon his promise that he would give up Dorothy and turn over a new leaf in his way of living, for her mother's sake and reliant on this solemn pledge, Luisa yielded and returned with him to Tacloban. They had been living together scarcely for three months until 26 August 1941, when Luisa, sick and tired of the endless cruelty of her husband, specially whenever she reminded or perhaps chided him for his renewed promiscuousness, and aware of the hopelessness of her desperate struggle to regain him from the clutches of his mistress, Dorothy, abandoned again their conjugal home and went to live with her mother in

Abuyog. Overtaken by the sudden outbreak of the war and the resulting difficulties in transportation and paralyzed by the interference of the guerrillas who had cut off all regular communications with Tacloban, Luisa had no means nor ways to return to Tacloban until January 1944.

She learned then, for the first time, that a child, Patricia Engle, was born to Dorothy on 13 December 1942, and that it was recorded in the record of births of the office of the municipal treasurer of Tacloban as the illegitimate child of appellants Theodore Engle and Dorothy Price (Exhibit F; t. s. n., pp. 25-26). The attending midwife, who assisted Dorothy during her parturition and subsequently prepared in person the birth certificate that she had to forward by express legal mandate to the municipal treasurer of Tacloban and local civil registrar, testified abundantly and categorically that the data contained in said certificate were filled in by her upon direct information furnished and explicit instructions given out by Theodore Engle and Dorothy Price, who were then living together in the house owned by the man, and which is the same house where Dorothy had lain for delivery. After the form was accomplished, Theodore and Dorothy signed the birth certificate, as shown in the original produced in court by its legal custodian and identified during the trial (t. s. n., pp. 27-28, 30-32).

Luisa also saw that her husband and Dorothy were publicly and scandalously living together under the same roof, as husband and wife; the trial judge observed personally during the trial of this case that Dorothy was again on the family way. The midwife's revelations with the other testimonial evidence in the records, independent of any documentary proofs, are sufficiently conclusive to prove the crime charged.

The appellants presented no proofs and chose to submit their case for decision after the prosecution had closed its evidence, basing their petition for acquittal on the implied consent of the offended party to the acts of concubinage between the appellants.

There can be no question therefore that the accused Theodore Engle and Dorothy Price had been living together in concubinage (U. S. vs. Pitoc et al., 43 Phil. 758). The sole issue raised by the appellant rests on the theory that "the offended party had pardoned her husband and his co-appellant, Dorothy Price, or consented to their illicit and adulterous relations and consequently, the said offended spouse is already barred from prosecuting them."

Once the co-habitation or the illicit relation has been admitted or established in a concubinage case, the *onus probandi* of the alleged consent or condonation lies on the defense, because this is an affirmative assertion that has to be proven. "The burden of proof is not on the prose-

cution to show lack of consent or condonation" (U. S. and Juan Antonio *vs.* Alcaraz et al., 11 Phil. 660).

The appellants not only failed to prove this alleged consent or pardon but they expressly waived their right to present their defense evidence. The records abound with uncontradicted evidence that the wife did not at any time consent either expressly or impliedly to her husband's immoral acts; there is no proof that she has acquiesced in his relations with his paramour. The complainant time and again had prohibited her husband from seeing his concubine; a quarrel was oftentimes the off-shoot, invariably leading to the physical maltreatment of Luisa by Theodore.

The defense stresses a point on the inaction of Luisa for over a year; namely, from January 1940, when the appellants were seen kissing each other during the costume dance held at the provincial auditorium of Tacloban, to 28 May 1941, when Luisa's attorney prepared at her request a complaint for concubinage against the appellants; and, it contends that such silence may be construed as an act of acquiescence in the illicit relations between the appellants.

The first element in consent or condonation is knowledge of the offense. (Day *v.* Day, 71 Kans, 385, SOP, ac. 974, 6 Ann. Cas. 169; Shackleton *v.* Shackleton, 48 N. J. Eq. 364, 21 Atl. 935, 27 Am. St. 478; Smith *v.* Smith, 4 Paige (N. Y.) 432, 27 Am. Dec. 75. See notes 9 LRA 699; Ann. Cas. 1912C, 6), for there can be no condonation without knowledge (Van Wickle *v.* Van Wickle (N. J.), 108 Atl. 761; Laycock *v.* Laycock, 52 Ore. 610, 98 Pac. 487; Canning *v.* Canning 87 Vt. 492, 89 Atl. 1088, Ann. Cas. 1916 C, 344) Luisa had no direct nor conclusive evidence of the illicit relations between her husband and Dorothy during the period indicated. Mere suspicions aroused in her mind, by seeing the appellants kissing each other, or riding together in automobiles, or going to the movie-houses, bowling alleys and the water-front, or that she knew that her husband stayed nights in the house of Dorothy, however strong they may be, do not constitute the type of evidence required to obtain the conviction of her husband and his paramour of the crime of concubinage. (Mitchell *v.* Mitchell 193 Iowa 153, 185 N. W. 62; Day *v.* Day, 71 Kans. 385, 80 Pac. 974, 6 Ann. Cas. 169; Shackleton *v.* Shackleton, 48 N. J. Eq. 364, 21 Atl. 935, 27 Am. St. 478; Johnson *v.* Johnson, 78 N. J. Eq. 507, 80 Atl. 119.) It is true that her mental doubts may have been dispelled by the discovery of the love letters, but it is highly doubtful whether or not such letters, uncorroborated by other material and competent evidence, would have been sufficient to support a conviction for concubinage. (See U. S. *v.* Campos Rueda et al., 35 Phil., 51; U. S. *v.* Casipong et al., 20 Phil., 178;

Decs. Sup. Ct. of Spain, 16 June 1888, and 25 February 1896.)

It is of no avail to argue that Luisa condoned this illicit relation when she returned in 1941, from Abuyog to Tacloban, upon the instance of Theodore, who lured her with promises that he would mend his way of life. Condonation is a frequent defense in this type of felonies, and it is, in fact, favored in law. (Bishop v. Bishop, 82 Misc. 676, 144 NYS 143.) We reiterate that its meaning is that the offended party forgives the offense with full knowledge of the *delictum*, but only upon the condition that the offense be not repeated. (Neeley v. Neeley, 179 Cal. 232, 176 Pac. 163; Wade v. Wade (Mo. App.), 229 S. E. 432; Rogers v. Rogers, 81 Wash. 502, 142 Pac. 1150.) As condonation is forgiveness based upon the presumption and belief that the guilty party has repented, any subsequent acts of the offender showing that there was no repentance will not bar the prosecution of the offense even though condonation has been extended. As stated by our Supreme Court, the word "consent," used in article 344 of the Revised Penal Code, has no reference to any consent or agreement prior to the commission of the offense but relates to an express or implied acquiescence *subsequent* to the offense. (People v. Guinucud et al., 58 Phil. 621.) Any act of infidelity to the vows of marriage subsequent to the condonation constitutes a new offense that is subject to a criminal prosecution. A contrary view will result in an amoral situation that will lead not only to the ultimate destruction of the sacred institution of the family but also to the collapse of the solid foundations of society. If marital intercourse and continued living together is to be treated as condonation of future criminal violations, then a spouse who hopes for an improvement in the conduct of the erring one and continues marital relations in the hope that things may eventually straighten out, is, by the very act of tolerance, barred from protesting her trampled rights. The doctrine of condonation was not intended to create such a dilemma. (See Cudahy v. Cudahy, 217 Wis. 355, 258, N. W. 168.)

The appellants finally suggest that the delay in bringing suit amounted to a condonation, and, therefore, it bars this action.

In the case of Galle *vs.* Sahagun, 2 Phil. 425, it was held that a delay of seven months in presenting a complaint for adultery was not sufficient evidence to prove that the husband consented to the adultery. Similarly, in People *vs.* Llagas, 40 O. G. No. 5, p. 990, where the offended wife waited one year to institute the action for lack of sufficient evidence, it was held that said delay did not constitute implied consent.

The delay in this case is due to unavoidable circumstances, for, as Luisa explained, the transportation facilities between Abuyog and Tacloban were entirely disrupted during the Japanese occupation, and the guerrillas, who ruled in the town of Abuyog, prohibited its inhabitants from leaving the place. Paraphrasing a former decision of our Supreme Court, we hold that the failure of the wife to present her complaint does not prove that she gave her consent to the concubinage between the appellants, considering the unsettled state of affairs in Leyte as a consequence of the Japanese occupation. (See *Mortiga vs. Serna et al.*, 5 Phil. 34, 36.)

In the closing part of the appellants' brief, information is brought before this Court that the complainant, Luisa, died on 10 February 1945 in Palo, Leyte. This is supported by a certificate of death, attached to the brief and marked as Appendix B. The situation is not new. This Court has ruled in a case of adultery that the death of the offended husband during the pendency of the appeal does not warrant the dismissal thereof. (*People vs. Diego*, 38 O. G. 2537.) The wife is entitled to the protection of her honor during her lifetime as well as after her death (art. 334, R. P. C.). By analogy, the death of Luisa does not terminate this case; the appeal should follow its regular course.

As the appellants have been cohabiting together in the house where the concubine gave birth to the illicit fruit of their sexual relations, which is penalized by article 334 of the Revised Penal Code, we conclude that the appellants are guilty of the crime of concubinage. As the penalty prescribed for this felony is *prisión correccional* in its minimum and medium periods for the husband, and *destierro* for his concubine, and there are no modifying circumstances, said penalty should be imposed in the medium period or 1 year 8 months and 21 days to 2 years 11 months and 10 days of *prisión correccional*, and from 2 years 4 months and 1 day to 4 years and 2 months of *destierro*.

Applying the Indeterminate Sentence Law, as amended, the appellant Theodore Engle is sentenced to an indeterminate penalty of not less than 6 months of *arresto mayor*, and not more than 1 year 8 months and 21 days of *prisión correccional*, while the appellant Dorothy Price is sentenced to 2 years, 4 months and 1 day of *destierro*.

With the modifications of the penalties as above indicated, the judgment of the trial court is affirmed, with costs against the appellants.

It is so ordered.

Jugo and De la Rosa, JJ., concur.

Judgment modified.

[No. 305-R. April 11, 1947]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. FELIX VALENCIA, defendant and appellant

1. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; INSULT OR DISRESPECT TO SEX AS AGGRAVATING CIRCUMSTANCE, WHEN CONSIDERED.—The mere fact that the victim of a crime is a woman is not in itself sufficient to support the contention that there is present the aggravating circumstance of insult or disrespect to sex. It is necessary to prove the specific fact or circumstance, other than that the victim is a woman, showing insult or disregard of sex in order that it may be considered as aggravating circumstance.
2. ID.; ID.; HUSBAND ASSAULTING DIVORCED WIFE REGARDING CUSTODY OF THEIR CHILD.—In the case at bar, the accused and his victim were divorced and the custody of their only child was given to the wife. Because his former wife would not allow him to visit their daughter, the accused became infuriated and injured her with a pistol shot. Under such circumstances, the question of the sex of the victim had not aggravated the criminal liability of the accused.

APPEAL from a judgment of the Court of First Instance of Bulacan. Buenaventura, J.

The facts are stated in the opinion of the court.

Vicente Ampil for appellant.

Assistant Solicitor-General Gianzon and *Solicitor Borromeo* for appellee.

TORRES, J.:

The Court of First Instance of Bulacan, in criminal case No. 190, found Felix Valencia guilty of the complex crime of discharge of firearm with serious physical injuries and sentenced him to an indeterminate penalty ranging from 4 months and 1 day of *arresto mayor* to 1 year, 8 months and 20 days of *prisión correccional*, with the accessory penalties of the law and to pay the costs.

This accused was originally charged with frustrated parricide under an information which alleged that on or about the 16th day of August, 1945, in the municipality of Paombong, Province of Bulacan, and within the jurisdiction of the Court of First Instance of said province, said Felix Valencia unlawfully and feloniously, with intent to kill, shot his wife, Avelina de Silva, with an automatic pistol, caliber .32, and as a result thereof said Avelina de Silva suffered "a complete, compound fracture of the right humerus," and that although he performed all the acts of execution which should have produced the crime of parricide as a consequence nevertheless did not produce it by reason of the timely and able medical assistance rendered to the victim.

During the hearing of this case, it was shown that Felix Valencia and Avelina de Silva were married according

to the rites of the Catholic church on December 24, 1942, but were subsequently divorced pursuant to a decree issued by the Court of First Instance of Bulacan on October 22, 1944, whereby Felix Valencia was ordered to deliver to Avelina de Silva their six months' old baby girl begotten during their union.

It appears that on August 16, 1945, the accused met the offended party near the church of Paombong, Province of Bulacan. He asked Avelina de Silva to allow him to visit their daughter, but Avelina de Silva turned down his request. When she boarded a carretela, the herein accused and appellant became infuriated and drew a gun which he was carrying at that time. According to him, the firearm was accidentally discharged and Avelina de Silva was wounded, as alleged in the information. In the meantime, Valencia turned around and heard a whistle blown by a policeman who was coming from the opposite direction. The policeman asked him what happened, and after informing the latter about what transpired a few moments ago, he requested the policeman to accompany him to the municipal building.

The prosecution informed the court that it had no evidence to support a charge for frustrated homicide, much less for frustrated parricide, as alleged in the information, and was granted permission to amend the information so as to accuse appellant only of discharge of firearm with serious physical injuries. Then accused was allowed to withdraw his former plea of "not guilty" to the original charge and to enter a plea of "guilty" of said lesser offense. Defendant was further permitted to submit evidence in support of his contention that the crime was committed with the attendance of the mitigating circumstances of voluntary surrender, obfuscation and plea of guilty, after which the court rendered judgment as already stated.

Upon consideration of the testimony of the accused and that given by Bruno Pasco, the municipal policeman who accompanied Felix Valencia to the municipal building, we find that the circumstances of voluntary surrender and that of plea of guilty, provided in paragraph 7 of article 13 of the Revised Penal Code, have been established.

However, appellant's contention that the mitigating circumstance of obfuscation shall be appreciated in his favor is not clearly supported by the evidence submitted and we shall not entertain the same.

It is submitted by the Solicitor General that the circumstance of disregard of the sex of the offended party should be taken into account to aggravate the criminal liability of this appellant. We are not unmindful of the fact that, upon the issuance of the divorce decree which dissolved the marriage then existing between appellant and the offended

party, the sex of the latter might properly be considered as an aggravating circumstance for the purpose of fixing the penalty to be imposed upon this appellant. But we must not lose sight of the fact that, notwithstanding the divorce decree, there still exists some relationship between Felix Valencia and his divorced wife, Avelina de Silva, which has direct bearing with their only child, for which reason appellant was asking his former wife to allow him to visit their daughter whose custody was, by direction of the court that issued the divorce decree, entrusted to her. Under those circumstances and in view of the fact that, notwithstanding the decree that severed their marital relation, this appellant had to deal with no other person but his former wife to allow him to visit his daughter, we fail to see any reasonable ground to concur with the view of the Solicitor General in the premises. In *People vs. Zambrana* decided by the Court of Appeals on July 31, 1936, this Court, citing *U. S. vs. De Jesus* (14 Phil., 190), held that "the mere fact that the victim of a crime is a woman is not in itself sufficient to support the contention that there is present the aggravating circumstance of insult or disrespect to sex. It is necessary to prove the specific fact or circumstance, other than that the victim is a woman, showing insult or disregard of sex in order that it may be considered as aggravating circumstance." Moreover, as already stated elsewhere in this decision, this appellant, having entered a plea of guilty to the amended information and there being in the latter no allegation regarding said aggravating circumstance, the prosecution did not, and could not, present any proof concerning the same.

As correctly remarked by the Solicitor General, although this appellant was found guilty of the complex crime of discharge of firearm with serious physical injuries—which are described as "complete, compound fracture of the right humerus"—the record does not show what paragraph of article 263 of the Revised Penal Code has been applied by the lower court. For lack of evidence about the duration that the injury took to heal, we are constrained to consider the crime of discharge of firearm as the more serious of the two offenses composing the complex crime of which appellant was convicted, and it may be inferred, from the penalty imposed, that the lower court also held the same opinion.

The penalty provided by article 254 of the Revised Penal Code (discharge of firearms) is *prisión correccional* in its minimum and medium periods, and inasmuch as the offense committed is one of complex crime of discharge of firearm with serious physical injuries, pursuant to article 48 of the Revised Penal Code, as amended by Commonwealth Act No. 400 the penalty prescribed by said

article shall be applied in the maximum period. In view of the attendance of two mitigating circumstances (plea of guilty and voluntary surrender) without any aggravating circumstance, and pursuant to rule 5 of article 64 of the Revised Penal Code, said penalty shall be the next lower to that prescribed by law in the period that it may be deemed applicable.

This appellant should be, and is, therefore, sentenced to 6 months of *arresto mayor* and its corresponding accessories.

With the above stated modification, the judgment appealed from is otherwise affirmed, with costs.

Endencia and Felix, JJ., concur.

Judgment modified.

[No. 586-R (L-668). April 11, 1947]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. FLORENTINO TORRES, defendant and appellant

1. EVIDENCE; DYING DECLARATION; DECLARANT NEED NOT EXPRESSLY STATE THAT HE HAD LOST ALL HOPE OF RECOVERY.—It is not essential to the admissibility of an *ante mortem* declaration that the declarant should expressly state that he had lost all hope of recovery, for it is sufficient that the circumstances were such as to lead inevitably to the conclusion that at the time he made the declaration he did not expect to survive the injury (*People vs. Serrano*, 58 Phil., 669). In the case at bar, the deceased plainly stated his belief that he was going to die, and had no hopes to survive his injuries.

2. ID.; ID.; HOMICIDE THROUGH RECKLESS IMPRUDENCE; CONVICTION BASED ON "ANTE MORTEM" DECLARATION.—In a prosecution for homicide, verdict of guilt may be mainly based on *ante mortem* statement of the deceased. (*People vs. Serrano*, 58 Phil., 669.) But this can be only so when the effect of the dying declaration, even assuming the truthfulness of the declarant, is not impaired, as in the instant case, by other positive proof that might exonerate the person indicted from criminal liability.

APPEAL from a judgment of the Court of First Instance of Laguna. Sandoval, J.

The facts are stated in the opinion of the court.

Leonardo Abola for appellant.

Assistant Solicitor-General Alvendia and *Solicitor Arguelles* for appellee.

FELIX, J.:

After the recreation of the Court of Appeals, the Supreme Court certified to us this case brought to that Court on appeal from a decision rendered by the Court of First Instance of Laguna.

It is undisputed that at about 8:30 o'clock in the morning of September 24, 1944, Fidel Abistado was an electri-

cian helper at the substation of the National Power Corporation in its power plant at Caliraya, Lumban, Laguna, under the immediate command of his superior, the defendant Florentino Torres, and of one Marcelino Apilado, the last two being electricians of the same corporation. While Abistado was then working in his said capacity, he touched an iron tube in the substation charged with electric current of high voltage, thus receiving a violent electric shock that caused him to fall to the ground swathed in flames and to sustain extensive burns in different parts of his body. Because of the injuries he received, all of which were necessarily fatal, Abistado died at the Laguna Provincial Hospital in the afternoon of the following day, September 25, 1944.

Aside from the defendant and his companion, Marcelino Apilado, there was no eye-witness to the occurrence, and on account of their knit confraternity it is natural to expect that they would endeavor to shield each other and to elude any responsibility, if any, they had incurred. However, before Abistado sighed his last breath, he was able to give a dying declaration (Exhibit A) which the Chief of Police Gaudencio Añonuevo of Lumban took at the Provincial Hospital in the presence of another employee of said company named Felipe Reodica. This dying declaration makes up the web of the evidence on which the present prosecution is maintained. The respective versions of both the Government and the defense as to how Fidel Abistado met his death, are fairly stated in the decision of the trial judge from which the following is copied:

"The deceased categorically states (in Exhibit A) that shortly before the mishap, he was ordered by the accused to climb a post and clean a tube in the substation that was charged with electricity, while the accused and Apilado remained on the ground below. Upon being ordered to clean the tube, the deceased called the attention of the accused that something might happen to him, but as the accused made no reply, he proceeded to comply with the order of his superior, thereby causing the accident.

The accused vehemently denies having ordered the deceased to clean the tube connected to the bushing of the OCB (Oil Circuit Breaker) control 100 (see letters A and C in red pencil on the sketch Exhibit 5) or for that matter, any other tube in the substation on the morning in question. His version is that shortly before the occurrence, he and Apilado were meggering the wires of auxiliary circuit 34-C which is the circuit of the auxiliary switch for disconnecting No. 31, while the deceased, who had been assigned as their helper, was working in the spot marked 3 on the sketch Exhibit 5. Before commencing their task, however, Apilado asked the deceased to fetch a buzzer from the store room in the power house about fifteen meters from the place where they were then working, because they needed it in finding the ends of the wires that were being tested. As they were thus engaged in their work, they noticed that the deceased was playing with the buzzer some five meters behind them, so they forthwith ordered him to stop since it would discharge the battery, con-

nected to the buzzer. A few moments afterwards, they beheld a sudden flash of light followed instantly by a loud explosion. The flash blinded them momentarily, but when they were able to recover their vision, they looked towards the place where the sound emanated and found Fidel Abistado already lying prostrate inside a trench near the foot of the OCB control structure, indicated with a red X on the sketch Exhibit 5, with his clothes burning. The accused then ran to the power house and fetched a fire extinguisher by means of which he succeeded in putting out the fire that was burning Abistado's clothes."

After hearing and on the strength of Exhibit A, defendant Florentino Torres was found guilty of the crime of homicide through reckless imprudence and sentenced, under the provisions of article 365 of the Revised Penal Code, to suffer an indeterminate penalty of 4 months of *arresto mayor* to 1 year and 1 day of *prisión correccional*, to indemnify the heirs of the deceased Fidel Abistado in the sum of ₱1,000, with subsidiary imprisonment in case of insolvency, and to pay the costs.

Because of this result the defense submits in this instance that the trial judge erred: (1) in admitting as evidence Exhibit A of the prosecution; and (2) in finding the accused guilty beyond reasonable doubt of the crime charged in the complaint and in sentencing him accordingly.

With regard to the first assignment of error, the record shows that when Chief of Police Añonuevo took the *ante mortem* declaration of the deceased, the latter was suffering from the effects of extensive burns, and when asked whether he believed he was going to survive, he replied: "Hindi ko po masabi, ngunit sa aking pakiramdam ay ikamamatay ko" (I cannot tell, although I feel that my injuries will cause my death), and in fact he was so worn out that he died on the following day as a result thereof. Section 28, rule 123 of the Rules of Court, provides:

"SEC. 28. *Dying declaration*.—The declaration of a dying person made under consciousness of an impending death, may be received in a criminal case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death."

Although it is not essential to the admissibility of an *ante mortem* declaration that the declarant should expressly state that he had lost all hope of recovery, for it is sufficient that the circumstances were such as to lead inevitably to the conclusion that at the time he made the declaration he did not expect to survive the injury (*People vs. Serrano*, 58 Phil., 669), in the case at bar the record shows clearly that Fidel Abistado had no hopes to survive his injuries and plainly stated his belief that he was going to die. And such statement being sufficient to justify the admission of Exhibit A (*People vs. Reyes*, 52 Phil., 541-542; *People vs. Pareja*, 47 Phil., 525, 528), this Court holds that the trial judge did not commit any error in receiving as evidence

said dying declaration. We further believe and so declare that Fidel Abistado, then on the threshold of eternity, meant to tell the truth and to relate the circumstances attending his electrocution, as he understood them to be.

The only question that confronts us concerning the second assignment of error is whether or not the defendant shall be held responsible for the death of Fidel Abistado and sentenced accordingly.

Appellant set up the defense that shortly before the occurrence the deceased was seen toying with the flaminol wire of a buzzer, and that the chances were that under his playful instinct he had thrown one end of said flaminol wire against the bushing, that was charged with electricity, while holding the other end, thereby causing the mishap which resulted in his death. We do not attach much importance to this defense, for it is not based on any definite and positive proof but on a mere assumption incompatible with Exhibit A. But we cannot close our eyes to certain facts established by the defense, from which we may view the case from a different angle. Thus, the record shows that Torres and Apilado were assigned by their chief, Alejandrino Jimenez, to disconnect some circuits at points 31 and 32, having Abistado as their helper; that while Torres and Apilado were busy at their work, Abistado was behind them about five meters away; that in the OCB control apparatus there were several tubes, pipes and wires; that such apparatus was an outdoor structure that was never cleaned and was made not to be cleaned, rain or shine; that the work assigned by engineer Jimenez to Florentino Torres and Marcelino Apilado with the deceased as helper, consisted in disconnecting some circuits at points 31 and 32 in order to test every circuit, and that said work did not involve the cleaning of the tube fixed over the bushing and charged with high voltage current; that both appellant and Apilado were standing in the vicinity of the apparatus in question, and apparently their work did not require any disconnection of the electric current, as otherwise they would have done it for their own safety; and that the deceased Fidel Abistado ought to know and actually knew that the tube marked with the letter A in red pencil on Exhibit 5 was charged with high voltage current.

Considering these facts, it would seem quite preposterous for any man in his senses to order the cleansing of a dangerous tube of an outdoor structure which was never cleaned and made not to be cleaned. Such order was not to be expected and at least it was not probable. For this reason we are more inclined to believe that, while performing the work assigned to Torres and Apilado, the former might have instructed Abistado to clean some tube or other part of the OCB control, and that the deceased misunder-

stood the order and thought that he was commanded to clean the bushing or the dangerous tube to which it was connected, but such misunderstanding is not and can not be attributable to appellant. The deceased knew that there was risk in the job he imagined he had been instructed to execute, and that is why he called the attention of appellant saying: "Baka ako ay madesgracia" (I may meet an accident), but appellant made no reply, undoubtedly because, engulfed in his work, he did not hear the remark of the deceased, who without any more ado proceeded to perform the duty he deemed was demanded of him, cavorting once again the ephemeral of human life. We concur in and reiterate the doctrine laid down in the aforementioned case of *People vs. Serrano, supra*, that, "in a prosecution for homicide, verdict of guilt may be mainly based on *antemortem* statements of the deceased," but this can be only so when the effect of the dying declaration, even assuming the truthfulness of the declarant, is not impaired, as in the instant case, by other positive proof that might exonerate the person indicted from criminal liability. Under the circumstances of record, this Court is inclined to give appellant the benefit of the doubt.

Wherefore, the decision of the lower court is reversed, and defendant-appellant Florentino Torres is hereby acquitted of the crime he is accused in this case, with costs *de officio*.

Torres and Endencia, JJ., concur.

Judgment reversed.

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[No. 304-R (L-777). April 21, 1947]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
JESUS JALANDONI ET AL., defendants. JESUS JALANDONI, appellant.

1. CRIMINAL LAW; ROBBERY; EVIDENCE; CONFESSION; "CORPUS DELICTI"; PROOF "ALIUNDE"; PARTICIPATION OF ACCUSED IN THE CRIME NEED NOT BE PROVED INDEPENDENTLY.—The testimony of the robbed Chinaman, which directly established that he had been the victim of robbery by force and intimidation, since he was threatened with a pistol and later tied up, satisfied the requirement that the *corpus delicti* must be proved independently of the confession. The rule in this jurisdiction does not demand that the participation of the accused in the crime be also independently shown.

2. ID.; ID.; ID.; ID.; CORROBORATION OF EXTRAJUDICIAL CONFESION NEED NOT BE INDEPENDENT OF THE PROOF OF THE "CORPUS DELICTI."—The corroboration of an extrajudicial confession need not be independent of the proof of the *corpus delicti*; and the generally accepted rule is that independent evidence of the latter is sufficient corroboration of the confession. (VII Wigmore on Evidence, Perm. Ed., sec. 2071; 22 C. J. S. p. 1473, sec. 389.)

3. ID.; ID.; ID.; PRESUMPTION; UNEXPLAINED POSSESSION OF ROBBED ARTICLES.—While it is true that unexplained possession of stolen articles usually gives rise to a presumption or inference of theft, such presumption necessarily becomes one of robbery when it is proved that the owner of the articles was deprived of them by violence or intimidation. It would be absurd to declare that the owner was the object of robbery but that the culprit is only guilty of theft.
4. ID.; ID.; AGGRAVATING CIRCUMSTANCE OF DWELLING.—The aggravating circumstance of dwelling should not be taken into account as there is no clear evidence that the offended party lived in the very store where the robbery occurred. Where the aggravating circumstance is not alleged in the information, it is but fair to require that its presence be clearly proved, as the accused may not have introduced contradictory evidence through inadvertence.
5. ID.; ID.; NOCTURNITY.—The aggravating circumstance of nighttime cannot be taken into account where it does not appear that the accused purposely waited for darkness or that at 7 o'clock of the night in question it was dark enough to facilitate the commission of the crime.

APPEAL from a judgment of the Court of First Instance of Negros Occidental. Fernan, J.

The facts are stated in the opinion of the court.

Jose Y. Hilado for appellant.

Acting First Assistant Solicitor-General Gianzon and *Solicitor Umali* for appellee.

REYES, J. B. L., J.:

The appellant, Jesus Jalandoni, was charged with the crime of robbery in the Court of First Instance of Negros Occidental, together with Francisco Pedrajas, Nicanor Españaola, Dominador Canlas, Lauderico Nicor and Romeo Nava. Canlas, Nava and Nicor pleaded guilty; Pedrajas and Españaola were acquitted, but Jesus Jalandoni was found guilty as charged and sentenced to suffer not less than 6 months of *arresto mayor* and not more than 4 years and 8 months of *prisión correccional*; to indemnify the offended party in the sum of ₱468, with subsidiary imprisonment in case of insolvency, and to pay the costs of the proceedings. From the judgment of conviction Jalandoni appealed to this Court.

The evidence discloses that at around 7 o'clock in the evening of May 6, 1946, three armed men broke into the "Liberty Store" of Chinaman Uy Chiat, located at No. 46 Gonzaga Street, Bacolod City. Threatening the Chinaman and his wife with revolvers or pistols (Exhibits D, E, F), the three tied the husband's arms behind his back, opened his trunk and took therefrom one Waltham watch, valued at ₱120; one Elgin watch, worth ₱50; one revolver, caliber .380 and ₱680 in circulating notes of various issues and denominations. At a knock from outside the door, the

malefactors left. Then the Chinaman's wife set him free and he reported the matter to the police. Inspector Manuel Tambasen questioned Romeo Nava, who pointed to the appellant as a coparticipant in the robbery. Upon investigation, Tambasen was taken by appellant Jalandoni to his house and shown the basket where he had hidden the .380 caliber revolver, Exhibit I, and the Elgin and Waltham watches, Exhibits G and H, stolen from the Chinaman. Appellant also revealed that he had entrusted the .45 caliber pistol used by him during the robbery to the owner of the "Dormitorio Tailoring" shop, from whom it was recovered. Subsequently, Jalandoni subscribed before Municipal Judge Hofileña, of Bacolod City, an affidavit, Exhibit A (translated in Exhibit A-1) confessing that he conspired with his codefendants at the Victory Hotel, Luzuriaga street, to commit the robbery and participated in its commission and in the division of the loot, he having kept the greater portion thereof. Appellant's coaccused also executed affidavits revealing that Jesus Jalandoni was a coparticipant in the crime (Exhibits B-1, C-1, M and N), although Nava contradicted his affidavit at the trial to the extent of denying that Jalandoni had taken part in the crime.

The accused Jalandoni raises four issues in this appeal: (1) That his confession was not voluntary; (2) that his participation in the robbery was not proved beyond reasonable doubt; (3) that there is no proof of the *corpus delicti* independently of his confession, Exhibit A; and (4) that said confession is not sufficient proof because it was not corroborated. We will discuss these issues separately.

(a) The testimony of the Chief of Police Torres, and of Municipal Judge Hofileña of Bacolod City, satisfies us that the confession, Exhibit A, was voluntarily executed. That the appellant had decided to make a clean breast of it is also shown by his pointing out to Police Inspector Tambasen the place where he had hidden the stolen goods, and the person to whom he entrusted the .45 caliber pistol (Exhibit D), which he held during the robbery.

(b) The mainstay of appellant's case on the sufficiency of the proof against him is that the offended party stated that only *three* men entered his store and robbed him, and in court the three were identified to be Canlas, Nava and Nicor, who pleaded guilty. This circumstance, although true, is by no means proof that only three participated in the execution of the crime, even if the offended party did not see the others. In fact, there is evidence that after the three already named held up the complainant, tied him and seized the stolen articles, someone outside knocked at the door, whereupon the robbers went out as upon a signal. Here is an indication that at least another

man, if not more, remained outside; and appellant's voluntary confession, Exhibit A, identifies him as one of those who met the other accused to conspire, plan and execute the robbery, although the complainant failed to see said appellant. There can be no doubt, upon consideration of all the evidence, that appellant's responsibility as a conspirator is proved. Nava's belated attempt to exonerate appellant is discredited by the witness' statement to the contrary (Exhibit M).

(c) Proof *aliunde* of the *corpus delicti* exists in the testimony of the robbed Chinaman, which directly established that he had been the victim of robbery by force and intimidation, since he was threatened with a pistol and later tied up. This evidence satisfies the requirement that the *corpus delicti* must be proved independently of the confession. The rule does not demand that the participation of the accused in the crime be also independently shown.

"* * * It is true that cases can be cited from various courts to the effect that proof of the *corpus delicti* should go beyond mere proof of specific injury or loss and comprehend not only somebody's criminal liability as the source of the loss but even the identity of the accused as the author of the crime. But, as observed by Professor Wigmore, if interpreted in this sense, the *corpus delicti* would be synonymous with the whole charge, and the rule would require corroborative evidence as to all elements of the crime independently of the confession. In conformity with the view of this learned author, we consider the more restricted meaning to be the one properly applicable to the expression in this jurisdiction. *It is therefore unnecessary to require independent proof of the criminal connection of the four accused with the four deaths and with the crime of arson, apart from their several confessions.*" (People vs. Mones, 58 Phil., 57; Italics supplied.)

"The other evidence required to establish the *corpus delicti*, in addition to that furnished by the confession need not be wholly independent of the confession, and it need not connect the defendant with the crime." (Underhill, Criminal Evidence, IVth Ed. p. 43; emphasis supplied.)

(d) The corroboration of an extra judicial confession need not be independent of the proof of the *corpus delicti*; and the generally accepted rule is that independent evidence of the latter is sufficient corroboration of the confession. (VII Wigmore on Evidence, Perm. Ed., sec. 2071; 22 C. J. S., p. 1473, sec. 839.) Be that as it may, the appellant's confession in this case is further confirmed by the finding of a large portion of the stolen articles in his possession. While it is true that unexplained possession of stolen articles usually gives rise to a presumption or inference of theft, such presumption necessarily becomes one of robbery when it is proved that the owner of the articles was deprived of them by violence or intimidation. It would be absurd to declare that the owner was the object of robbery but that the culprit is only guilty of theft.

The Solicitor General has called attention to the presence of three aggravating circumstances, dwelling (morada) of the offended party, nighttime and aid of armed men. We are of the opinion that the first should not be taken into account as there is no clear evidence that the offended party lived in the very store where the robbery occurred. Where the aggravating circumstance is not alleged in the information, it is but fair to require that its presence be clearly proved, as the accused may not have introduced contradictory evidence through inadvertence. Neither does it appear that the accused purposely waited for darkness or that at 7 p. m., in May it was dark enough to facilitate the crime, so that we may consider its commission aggravated by nocturnity. But the aggravating circumstance of aid of armed men (there being no question that three of the accused, one of them appellant herein, carried firearms) suffices to raise the penalty to its maximum, there being no mitigating circumstance to offset its effects. Consequently, the maximum of the indeterminate sentence imposed by the lower court should not be less than 6 years, 10 months and 1 day, nor more than 10 years of *prisión mayor* (article 294, subsection 5, Revised Penal Code).

Appellant, being twenty years old when the crime was committed, is not entitled to the benefits of article 80 of the Revised Penal Code.

With the modification that the maximum penalty is increased to 6 years, 10 months and 1 day, without subsidiary imprisonment in view of the provisions of article 39, subsection 3, of the Revised Penal Code, the judgment of the trial court is affirmed with costs against appellant in this instance.

Montemayor, Pres. J., and Concepcion, J., concur.

Judgment modified.

[No. 382-R. April 23, 1947]

CIRIACO MORALES, plaintiff and appellee, *vs.* LINO PAUNAN, deceased, substituted by CONSORCIA PAUNAN, administratrix of the estate of the late LINO PAUNAN, defendant and appellant.

1. EVIDENCE; DOCUMENTS; COLLATION; PROOF OF THE AUTHENTICITY AND GENUINNESS OF A WRITING.—One of the methods of proving the authenticity of a writing is collation, the comparison the court can make with other writings proven to its satisfaction to be authentic. (U. S. *vs.* De la Cruz, 28 Phil., 279.) The authenticity of a questioned signature, so far as dependent upon the features of the script, depends upon a general characteristic resemblance to admittedly genuine signatures, coupled with specific differences due to infinite variety of minute conditions controlling the muscles of the writer at each separate effort in writing his name. (People *vs.* Bustos, 45 Phil., 10.)

2. ID.; ID.; SIGNATURE HELD TO BE FORGED; CASE AT BAR.—The questioned signatures "Lino Paunan" were not written by Lino Paunan because: (a) The questioned signatures appearing on Exhibits A and B were written with tremulous and vacillating strokes, indicative of unfamiliarity with the writing process. Waverings are noted not only in the initial strokes of the capital letters L and P of the questioned signatures, but also in the joining of lines in the lower left part of the letter P, showing hesitation and disconnected movement. On the other hand, all the standard signatures of Lino Paunan are characterized by clean cut, smooth strokes common to natural freedom in writing, without tremors and hesitation; (b) The degree of rhythmic movement in the questioned signatures which results from the fact that the writer is following a model, is very low, unlike the case with the standard signatures of Exhibits 3 and 5, which show easiness and freedom of motion of the writing hand; (c) In the standard signatures, Lino Paunan started the initial strokes of the capital L from the top to a downward direction, as distinguished from the initial strokes of the same letter in the questioned documents; (d) In the standard signatures (Exhibits 3 and 5) the small letter "i" in "Lino" traverses or touches the terminal lower part of the capital L, as distinguished from the initial strokes of the same letter in the questioned documents; the inverted formation of the letter "o" in the questioned signature on Exhibit B, is entirely different from the formation of the same letter in all the standard signatures of Paunan in Exhibits 3 and 5. The loop formation on the terminal of the capital L in all the standard signatures of Paunan is graceful, while in the questioned signature of Exhibit A is awkward, and in Exhibit B tremulous; and (e) In all the standard signatures appearing on Exhibits 3 and 5, the terminal strokes of all the capital P's show a tendency to end upwards, which does not happen in the terminal strokes of the same letter in the questioned signatures, which show a tendency to end at the left.

3. ID.; PRICES; JUDICIAL NOTICE.—Judicial notice may be taken of the fact that at the beginning of the year 1944, and to be more exact, on January 18 of the said year, the date of document in question, one cavan of palay commanded a very high price in Japanese military currency.

APPEAL from a judgment of the Court of First Instance
of Nueva Ecija. Nable, J.

The facts are stated in the opinion of the court.

Jose S. Esteban for appellant.

Policarpio O. Sta. Romana for appellee.

TORRES, J.:

This is an action for specific performance brought in the Court of First Instance of Nueva Ecija by Ciriaco Morales against Lino Paunan, now deceased, substituted by Consorcia Paunan in her capacity as administratrix of his estate, to compel the defendant to execute the corresponding deeds of conveyance of three parcels of land in favor of the plaintiff, to deliver the possession of said lands to the plaintiff upon execution of the sale, to order the defendant

to pay to the plaintiff the sum of ₱2,000 as damages, and to pay the cost of this suit.

The properties involved in this litigation are: (a) a parcel of land, which is lot No. 3, plan Psu-34728, situated in the municipality of Laur, Nueva Ecija, of an area of 2,715 square meters, more or less, and described in transfer certificate of title No. 10159 of the register of deeds of Nueva Ecija; (b) a parcel of land, known as lot No. 1, plan Psu-34728, situated in the municipality of Laur, Nueva Ecija, of an area of 1,323 square meters, more or less; and (c) another parcel of land known as lot No. 2, plan Psu-34728, situated in the municipality of Laur, of an area of 149,912 square meters, more or less. These last two parcels of land (b and c) are described in transfer certificate of title No. 19065 of the said register of deeds.

It is alleged in the complaint filed by Ciriaco Morales that, by virtue of an agreement entered into between plaintiff and defendant on June 16, 1941 (Annex A), supplemented by another agreement contained in another document marked Exhibit B, defendant undertook to transfer the ownership of the three above-mentioned parcels of land to the plaintiff; that, notwithstanding that said defendant had received the sum of ₱3,500 in full payment of said parcels of land, contrary to the contents and purposes of said documents (Exhibits A and B), defendant has failed and refused to comply with the terms and conditions set forth in those documents and failed and refused to deliver the possession and still persistently fails, refuses and neglects to execute the corresponding deeds of conveyance of the above parcels of land in favor of the plaintiff. It is further alleged by plaintiff that by such failure of the defendant to abide by the terms and conditions stipulated in Exhibit A, plaintiff has suffered damages in the sum of ₱2,000.

In his amended answer, defendant Lino Paunan, denying each and every allegation of the complaint, avers that annexes (Exhibits A and B), relied upon by plaintiff and purporting to be a promise to sell and a deed of sale, respectively, of the three parcels of land mentioned in the complaint, are both spurious, and the signatures of Lino Paunan affixed thereto are forged; that annex (Exhibit B) is further void for lack of consideration; that the ownership of the parcel of land referred to in the complaint and described in transfer certificate of title No. 10159 was transferred by Ciriaco Morales to Lino Paunan, by virtue of quitclaim deed executed by the former on October 2, 1939, as per annex (Exhibit 2); that plaintiff is now estopped from questioning the validity of the same; that inasmuch

as the parcels of land involved in this litigation have become part of the conjugal property of Lino Paunan and his wife, Rafaela Esteban, defendant could not legally execute the purported deed of sale of the lands in question during the period of time alleged in the complaint, because his wife, Rafaela Esteban, was already dead at that time; and that, by reason of plaintiff's malicious, fraudulent and criminal acts, defendant has suffered damages in the amount of one thousand pesos.

In view of the death of defendant Lino Paunan on March 29, 1945, Consorcio Paunan was appointed administratrix of the estate of said deceased, and later on substituted the latter as party-defendant.

After proper proceedings, the Court of First Instance of Nueva Ecija rendered judgment ordering the plaintiff Ciriaco Morales to pay the sum of ₱3,500 to the estate of Lino Paunan, and the administratrix of said estate to execute the necessary deeds of conveyance of the above three parcels of land and to deliver possession thereof to the plaintiff, without pronouncement as to costs.

The administratrix of the estate of the late Lino Paunan appealed from said judgment and assigns in this instance the following errors:

I

"The lower court erred in giving effect to Exhibit A in spite of the strong suspicion entertained by the same court of the genuineness of the signature 'Lino Paunan' therein appearing, and in not resolving such doubt in favor of the defendant.

II

"The lower court erred in giving credence to Exhibit A while entirely repudiating Exhibit B, both exhibits having proceeded from the same source and suffering from the same vice, and in spite of the stronger suspicion from the court that Exhibit A shows stronger earmarks of forgery than Exhibit B.

III

"The lower court erred in considering Exhibit C (Exhibit 12 for the defendant) as corroborative of Exhibit A instead of considering the same as a manufactured piece of evidence in an effort to fortify Exhibit A.

IV

"The lower court erred in that while it makes no findings as to any weakness or defect in the testimonies of the defense witnesses it nevertheless did not give due faith and credit to the direct, straightforward, and convincing testimonies of the witnesses for the defendant.

V

"The lower court erred in that while it makes adverse findings of weakness and defects in the testimonies of the plaintiff's witnesses, it nevertheless gave effect, in the result, to the same contradictory, evasive, and highly biased testimonies of the same witnesses.

VI

"The lower court erred in failing to appreciate the chain of strong circumstantial evidence tending to show unmistakably that Exhibits A and B are absolute forgeries.

VII

"The lower court erred in not declaring the signatures 'Lino Paunan' appearing in Exhibits A and B as forged, after comparing the same with the signatures of Lino Paunan appearing in Exhibits 3 and 5 as well as that appearing in the original answer, and;

VIII

"That the lower court erred in not dismissing the complaint against the defendant."

According to the record, the history of the three parcels of land in litigation is as follows: the first parcel described in transfer certificate of title No. 10159 was bought by Lino Paunan from Ciriaco Morales on March 26, 1936 (Exhibit 1—Defendant) while the other two parcels described in transfer certificate of title No. 19065, also originally owned by Ciriaco Morales, were likewise purchased by Lino Paunan at a sheriff's sale held on February 21, 1941. These two parcels had been mortgaged by Ciriaco Morales to Lino Paunan to guarantee a debt contracted by the former in favor of the latter, and upon Morales' failure to pay said debt and the mortgage foreclosed, the mortgaged lands were sold at public auction and adjudicated by the Sheriff of Nueva Ecija (Exhibit 10 and its annexes, Exhibits A and B, civil case No. 8448, foreclosure of mortgage) to Lino Paunan, the highest bidder.

Towards the end of the Japanese occupation, that is, on August 4, 1944, the complaint in this action for specific performance was filed, the plaintiff claiming that under the terms of Exhibits A and B defendant Lino Paunan had promised to sell him all the said parcels of land. Exhibits A and B bear the date of June 16, 1941 and January 18, 1944, respectively, when Lino Paunan was still alive. Lino Paunan, answering the complaint, denied under oath the genuineness and due execution of Exhibits A and B, and alleged that the signatures appearing therein are false. Therefore, the only issue now before us in this case is whether or not plaintiff's Exhibits A and B are authentic and the signatures affixed thereto were really written by Lino Paunan.

In this connection, we deem it most appropriate to quote from the judgment of the lower court some pertinent portions thereof. They are as follows:

"* * * el demandante contiene que en 16 de julio de 1941, Lino Paunan suscribió a su favor el Exhibito A, que es una opción de compra sobre, no solamente las dos parcelas de terreno objeto de hipoteca, sino también del primer lote vendido aún en 1936; que en enero de 1944, el demandante pagó a Lino Paunan ₱35 (₱3,500)

dinero japonés, y obtuvo de éste el documento Exhibito B, y así es que ahora pide se compela a los herederos de Lino Paunan a ejecutar los documentos de transferencia correspondientes de los repetidos tres terrenos. Debe advertirse que tanto el Exhibito A como el Exhibito B no están autenticados por ningún notario y por ende tiene la consideración de documentos privados. Durante la vista el demandante Ciriaco Morales declaró, así como dos de los cuatro testigos que firmaron dichos Exhibitos A y B.

"Aunque es cierto que Lino Paunan suscribió bajo juramento la contestación original de 14 de diciembre de 1944, la defensa no pudo presentar pruebas que directamente pudieran destruir los Exhibitos A y B; sin embargo, la defensa probó una serie de actos del entonces Lino Paunan demostrativos de que éste no estaba en buenas relaciones con el aquí demandante Ciriaco Morales, para destruir la pretensión de Morales de que el Exhibito A lo suscribió el difunto Lino Paunan por amistad. Debe advertirse, en realidad de verdad, que el Exhibito A carece de consideración pecuniaria.

"La defensa arguye que las supuestas firmas 'Lino Paunan' tanto en el Exhibito A como en el Exhibito B, son apócrifas. A este efecto se han presentado los Exhibitos 3 y 5, que contienen firmas legítimas del finado Lino Paunan, además desde luego, de la firma de Lino Paunan que aparece en la contestación original de diciembre de 1944. La representación de la parte demandada sostiene que las firmas 'Lino Paunan' en los Exhibitos 3 y 5 de la contestación original demuestran una caligrafía adiestrada, con trazos continuos, fluidos, mientras las firmas 'Lino Paunan' en los Exhibitos A y B parecen de un hombre poco educado, de pulso no firme, trazos vacilantes.

"La defensa hace hincapié la forma de testificar de Ciriaco Morales, que pretenden fué poco veraz, sobre todo, con respecto a sus relaciones de parentesco con algunos testigos suyos, así como cuando explicando el porqué el Exhibito A o por lo menos el Exhibito B, debía haber sido autenticado ante notario, dijo que en aquel entonces en Laur no había notarios públicos porque la gente había evacuado a las montañas, hecho que fué establecido como falso.

"Como se verá, toda la cuestión gira alrededor de los Exhibitos A y B; en una palabra, si estos exhibitos son auténticos, legítimos, no hay duda que el demandante Ciriaco Morales tiene derecho a las escrituras de traspaso que reclama, y si son falsos tales documentos, las propiedades deben permanecer como parte del caudal hereditario del finado Lino Paunan. No cabe duda que la ausencia de consideración del Exhibito A, o sea el documento de opción de compra, hace del mismo, estrictamente hablando un tanto defectuoso; pero suponiendo que fuese auténtico, es evidente que contiene una obligación que, teniendo en cuenta la ausencia de conocimientos legales de las partes, por lo menos de carácter moral. Cabe suponer que Lino Paunan tuvo en cuenta el hecho de que mientras él tenía un buen pasar, Ciriaco Morales no tenía nada más que estos terrenos.

"En cuanto a las firmas 'Lino Paunan' en los Exhibitos A y B (cuestionadas), comparadas con las firmas 'Lino Paunan' en los Exhibitos 3 y 5 y en la contestación original de diciembre de 1944 (genuinas), se nota que aquéllas están escritas con un pulso menos firme y menos fluido. Hablando particularmente de la firma 'Lino Paunan' en el Exhibito A aunque esté en dudas sin embargo, no son suficientes para concluir y justificar una declaración de falsedad; es más, la insistencia con que el demandante Ciriaco Morales ha estado urgiendo durante la dominación japonesa, hasta el extremo de pedir la intervención del Gobernador Provincial en mayo 25 de 1942 (Exhibito 2) en donde entre otras cosas, en el párrafo

3 dice: “* * * kami ay may kasulatang hawak na ang lupa kung ito ay may limang taon ang paluguit na maaari kong tubusin sa kaniyang pagbili sa subasta * * *’ abundan la veracidad del documento.

“No parece así, sin embargo, en cuanto al Exhibito B que además de las dudas que crea, la autenticidad de la firma ‘Lino Paunan’, hace difícil creer la retroventa hecha por ₱3,500 ‘war note,’ pues entonces el valor de las propiedades y habían subido más de cien veces, por el escaso valor adquisitivo del papel japonés; mayor razón hay para dudar la legitimidad del Exhibito B, si se tiene en cuenta que, siendo un supuesto documento de traspaso de propiedad, no se haya hecho ante notario, como es usual.

* * * * *

(Pp. 18-22, Record on Appeal)

From a careful perusal of the above-quoted paragraphs of the judgment of the Court of First Instance of Nueva Ecija, it is quite obvious that for the reasons set forth therein for the evaluation of the facts and circumstances surrounding the preparation of the questioned documents, Exhibits A and B of plaintiff, even the trial judge could not refrain from expressing an opinion adverse to the contention of plaintiff that said exhibits are genuine, entirely free from suspicion as regards their validity, and of such nature as to be made the basis of the present action to compel the late Lino Paunan, and now the administratrix of his estate to execute the corresponding deeds of conveyance of the three above-mentioned parcels of land in favor of plaintiff Ciriaco Morales, upon payment by the latter of the sum of ₱3,500.

But, notwithstanding the reasons adduced in the judgment appealed from, the trial judge, receding from the logical conclusion that would necessarily follow from the premises established in the above-quoted paragraphs, further said the following:

“En conclusión, este Juzgado cree que el demandante tiene derecho a recomprar de los herederos de Lino Paunan las tres parcelas de terreno descritas en esta causa por la suma de ₱3,500.

“En su virtud, se decreta que al pago de los ₱3,500 por el demandante Ciriaco Morales a la testamentaría de Lino Paunan, la administradora de dicha testamentaría suscribirá los documentos de traspaso necesarios sobre las tres parcelas descritas en esta causa, así como la entrega de la posesión de las mismas, sin especial pronunciamiento a las costas.” (P. 23, Record on Appeal.)

In U. S. vs. De la Cruz (28 Phil., 279), Chief Justice Arellano, speaking for the Supreme Court, said that “One of the methods of proving the authenticity of a writing is collation, the comparison the court can make with other writings proven to its satisfaction to be authentic”; and Justice Street, in People vs. Bustos (45 Phil., 10), likewise said “That the authenticity of a questioned signature, so far as dependent upon the features of the script, depends upon a general characteristic resemblance to admittedly

genuine signatures, coupled with specific differences due to infinite variety of minute conditions controlling the muscles of the writer at each separate effort in writing his name" (*syllabus*).

For the purpose of following the rulings made by the Supreme Court in the foregoing decisions, and although at the hearing of this case in the Court of First Instance of Nueva Ecija, no photographic enlargement of the signatures of Lino Paunan was submitted and made part of the record, photographic enlargements of the questioned and standard signatures of Lino Paunan, taken by the examiner of questioned documents of the Division of Investigation of the Department of Justice, were used by us in the study of this case to enable us to make, as accurately as possible, a most careful comparison of the alleged questioned signatures of Lino Paunan found on Exhibits A and B of plaintiff with the admitted genuine and standard signatures of said person appearing on Exhibits 3 and 5, and thus better determine the basic differences between the two sets of signatures. The following are the results of our comparison and our analysis and scrutiny of all the surrounding facts and circumstances of this case:

First. The signatures "Lino Paunan" appearing on Exhibits A and B have been compared with the signatures "Lino Paunan" appearing on Exhibits 3 and 5. Exhibit 3 is a tenancy contract dated June 22, 1941, between Lino Paunan as land owner and Anastasio Pacada as tenant; while Exhibit 5 is an original carbon copy of the last will of Lino Paunan made on November 12, 1944 and consisting of ten pages. Lino Paunan, pursuant to legal requirements, signed his name, not only at the bottom of the last page of the will, but also on the margin of each page. Taking the signatures of Lino Paunan appearing on Exhibit 3 and on the ten pages of his will (Exhibit 5) as the genuine and standard signatures of Lino Paunan, a comparison of the two questioned signatures "Lino Paunan" appearing on Exhibits A and B with those appearing on Exhibits 3 and 5 shows beyond doubt that the questioned signatures "Lino Paunan" were not written by Lino Paunan because:

(a) The questioned signatures (on Exhibits A and B) were written with tremulous and vacillating strokes, indicative of unfamiliarity with the writing process. Waverings are noted not only in the initial strokes of the capital letters L and P of the questioned signatures, but also in the joining of lines in the lower left part of the letter P, showing hesitation and disconnected movement. On the other hand, all the standard signatures of Paunan are characterized by clean cut, smooth strokes common to natural freedom in writing, without tremors and hesitations;

(b) The degree of rhythmic movement in the questioned signatures which results from the fact that the writer is following a model, is very low, unlike the case with the standard signatures of Exhibits 3 and 5, which show easiness and freedom of motion of the writing hand;

(c) In the standard signatures, Lino Paunan started the initial strokes of the capital L from the top to a downward direction, as distinguished from the initial strokes of the same letter in the questioned documents;

(d) In the standard signatures (Exhibits 3 and 5), the small letter "i" in "Lino" traverses or touches the terminal lower part of the capital L, as distinguished from the initial strokes of the same letter in the questioned documents; the inverted formation of the letter "o", in the questioned signature on Exhibit B, is entirely different from the formation of the same letter in all the standard signatures of Paunan in Exhibits 3 and 5. The loop formation on the terminal of the capital L in all the standard signatures of Paunan is graceful, while in the questioned signature of Exhibit A is awkward, and in Exhibit B tremulous; and

(e) In all the standard signatures appearing on Exhibits 3 and 5, the terminal strokes of all the capital P's show a tendency to end upwards, which does not happen in the terminal strokes of the same letter in the questioned signatures, which show a tendency to end at the left.

Second. The judge *a quo* has correctly noted that Exhibit A lacks monetary consideration. We need not delve on this point which on the face of said document is very apparent. He also states in his judgment that at least Exhibit B should have been authenticated by a notary public, a legal requirement that is very obvious considering the purpose for which it was prepared. Plaintiff, upon being questioned on this point, testified that when those documents were prepared no notary public could be found in the municipality of Laur who could authenticate them, because those officials had evacuated from the town on account of the war; but he made such statement without taking into consideration that when Exhibit A was prepared the Pacific war had not started yet. As to Exhibit B, dated January 18, 1944, it is a historical fact that the landing on Leyte, which started the campaign for the liberation of the Philippines, took place on October 20, 1944.

Third. Plaintiff, when cross-examined with reference to the circumstances surrounding the alleged preparation of Exhibits A and B, stated that with the exception of one, all the witnesses to Exhibit A are his relatives, notwithstanding that said document, as per plaintiff's testimony, was voluntarily written by Paunan, in the latter's house and while his wife and children were around the premises. It was likewise shown that, in spite of the evasive answers

of Ciriaco Morales, when he pretended ignorance of the degree of relationship between himself and Alberto Bulandan and Modesto Ligon, the subscribing witnesses to Exhibit B, it was established that said document was likewise allegedly signed by Paunan without witnesses of his own.

Fourth. Plaintiff claims that Lino Paunan voluntarily prepared Exhibits A and B, because he (Paunan) was his (Morales') protector. We would be inclined to give credence to this contention of plaintiff, were it not for the fact that the record of this case, far from supporting the same, reveals otherwise. For it shows that the two parcels of land covered by transfer certificate of title No. 19065 (formerly No. 8688) were mortgaged by Morales to guarantee a debt incurred by him in favor of Paunan. Morales defaulted payment of the debt, and Paunan instituted foreclosure proceedings (case No. 8448) which lasted over one year and caused much bitterness between the litigants. It is, therefore, absurd to think that Paunan, who on May 28, 1941 had just obtained possession of the parcels of land involved in the foreclosure proceedings, on June 16 of the same year—or seventeen days thereafter—would give his adversary an option to repurchase those properties which he had just acquired after a hard-fought litigation.

Fifth. Judicial notice may be taken of the fact that at the beginning of the year 1944, and to be more exact, on January 18 of the said year, the date of Exhibit B, one cavan of palay commanded a very high price in Japanese military currency. Considering that, as per inventory of the estate of Lino Paunan (Exhibit 9), at that time he was the owner of more than 100 hectares of land yielding around 3,000 *cavanes* yearly, it would be preposterous to think that he would have received ₩3,500 Japanese pesos from Ciriaco Morales in payment of a first class land measuring 16 hectares, which was the subject matter of foreclosure proceedings in case No. 8448 of the Court of First Instance of Nueva Ecija.

Sixth. The record shows that the three parcels of land, which Ciriaco Morales claims to have been reconveyed to him by Lino Paunan, are listed, included and described as part of the estate of Paunan as items 20, 21 and 24 of his last will and testament dated November 12, 1944 (Exhibits 5 and 9). It cannot be presumed that Lino Paunan would have listed as part of his estate parcels of land over which he had not absolute control as undisputed owner and bequeathed to his children properties that would become the subject of litigation for his heirs.

Seventh. In Exhibit C—which defendant made his Exhibit 12—Plaintiff, on May 25, 1942, was requesting the Provincial Governor of Nueva Ecija to intervene in the matter by helping him to recover from Lino Paunan the ownership of the lands in controversy—which he admitted

were purchased by defendant at a sheriff's sale subsequently confirmed by the Court of First Instance on April 25, 1941—in view of the fact that said Lino Paunan, disregarding a written promise made by him, would not reconvey to him (Morales) the ownership of the lands alluded to, namely, the two parcels covered by certificate of title No. 19065. At first blush, this exhibit impresses us as having been drafted to strengthen documents Exhibit A and B, and, as correctly remarked by counsel for appellant at page 12 of his brief, if this original letter Exhibit C was really written, addressed and forwarded to the Governor of the Province of Nueva Ecija, why and how it came back to the plaintiff to enable him to offer it as one of his documentary proofs in this litigation? If said letter really reached the office of the Provincial Governor, why does it not bear the stamp which would show that it was received in the governor's office? Plaintiff's evidence fails to give us the appropriate answers to these questions.

Finally, we cannot refrain from noting an effort made by plaintiff to serve his own interest by taking advantage of the political situation obtaining in this country, then under Japanese rule, when he accused Lino Paunan before the Japanese Military Police of appropriating his lands. Moreover, he caused Paunan to be investigated by the Japanese Military Police regarding his supposed connection with the *guerrillas*. Fortunately, the *Kempei-Tai* investigator, upon being shown the documents in the possession of Paunan and accepting the favorable information furnished by the Mayor of Laur, released Paunan who had already been confined for twenty hours in the municipal building, after being satisfied that defendant was in such weak condition as to preclude the idea that he was engaged in *guerrilla* activities.

It, therefore, becomes evident that, after summing up all the points of material basic differences existing between the questioned and the standard signatures of Lino Paunan, and upon consideration of all the other grounds stated above, the only logical conclusion that can reasonably be drawn from those premises is that the questioned signatures "Lino Paunan," appearing on Exhibits A and B, were not written by the deceased Lino Paunan, and are different from the admitted genuine signatures offered for comparison and appearing on Exhibits 3 and 5.

Wherefore, and in view of this conclusion, we are compelled to reverse the judgment of the Court of First Instance of Nueva Ecija. Consequently, this case is dismissed with costs against plaintiff. So ordered.

Endencia and Felix, JJ., concur.

Judgment reversed.

RESOLUTION ON THE MOTION FOR RECONSIDERATION

May 30, 1947

TORRES, J.:

In a petition entitled "Motion for Reconsideration Based on Newly Discovered Evidence," submitted by the attorneys for plaintiff-appellee, it is prayed that this Court reconsider its decision promulgated in this case on April 23, 1947. The grounds on which the petition is predicated are: first, "that plaintiff found newly discovered evidence"; and, second, "that the newly discovered evidence if given due consideration will materially affect the result of the decision." The motion is accompanied by an "Affidavit of Merits" signed by Julian Cimafranca before a notary public, reciting therein how the various documents attached to the motion were found.

According to said "Affidavit of Merits," the documents accompanying the "Motion for Reconsideration" were found within "an old wooden box" which belonged to the late Ciriaco Morales. The description of the accompanying documents, as given in the affidavit, which are now submitted as newly discovered evidence, is as follows:

- "(a) One document refers to a promise of Lino Paunan to re-sell the land in question to Ciriaco Morales, for ₱500;
- "(b) Another one is the original duplicate carbon copy of the letter of Ciriaco Morales to Governor Robles, of Nueva Ecija; and
- "(c) Original carbon copy of the 1st Indorsement and 2nd Indorsement signed by Governor Robles, and Acting Mayor Paraiso, in connection with the document mentioned in (b)."

Section 51 of rule 55 of the Rules of Court reads:

"Before entry of final order or judgment rendered by the Court of Appeals, a motion for a new trial may be filed therein on the ground of newly discovered evidence which could not have been discovered prior to the trial in the court below by the exercise of due diligence and which is of such character as probably to change the result. The motion shall be accompanied by affidavits showing the facts constituting the grounds therefor and the newly discovered evidence."

And section 1 of rule 37 of said Rules of Court, defining in paragraph (b) the term "newly discovered evidence," says that it is that evidence which he (the aggrieved party) "could not, with reasonable diligence, have discovered, and produced at the trial, and which if presented would probably alter the result."

Ciriaco Morales died sometimes in the month of November, 1946. This suit was brought by him when, on August 21, 1944, he filed a complaint against Lino Paunan to have the defendant execute the corresponding deed of conveyance of the parcels of land described in the complaint and to deliver to him the possession of the land involved therein upon execution of the sale, in addition

to the payment by the defendant of P2,000, as damages. The hearing of this case was commenced on February 21, 1946 and the judgment of the lower court was rendered on June 20, 1946. During the hearing, Ciriaco Morales submitted testimonial and documentary evidence and took the stand to give direct as well as rebuttal evidence. The exhibits presented by him in support of his contention consisted mainly of Exhibits A and B which have been most carefully and thoroughly examined by this Court. The signatures of Lino Paunan who according to Ciriaco Morales, signed those Exhibits A and B, were scrutinized and compared with standard signatures of said Lino Paunan appearing on Exhibits 3 and 5 of said defendant, and were found and declared by this Court to be false, not the genuine signatures of the deceased Lino Paunan.

It is now urged and contended in the motion for reconsideration that a document drafted in Tagalog and bearing the date of March 21, 1936, and supposedly signed by Lino Paunan in the presence of two witnesses, as well as two other documents, one dated May 25, 1942 addressed to Jose Robles, Jr., then provincial governor of Nueva Ecija, and another sheet of paper, are newly discovered evidence which if admitted would change the result of this suit. The facts stated above describe the circumstances surrounding the alleged discovery of said documents, and in the light of the above-quoted provisions of the Rules of Court, they cannot be admitted by this Court as newly discovered evidence. Ciriaco Morales was alive during the pendency of this suit in the Court of First Instance of Nueva Ecija and took an active part in the conduct of said litigation to the extent of testifying therein twice, as direct and rebuttal witness and, through his counsel, presented several documents on which he based his contention in said suit. Even admitting, for the sake of argument, that the documents now proffered as newly discovered evidence were found only a few days prior to the filing of said motion in a box containing papers that belonged to Ciriaco Morales, at most, this Court will consider them as "forgotten evidence," the submission of which to support a motion for reconsideration, cannot induce us to treat them as newly discovered evidence. (Bank of the P. I. vs. De Coster, 49 Phil., 574; Manila Railroad Co. vs. Mitchell, 49 Phil., 801.)

As provided in section 1, paragraph (b), of rule 37 of the Rules of Court, it must be shown by the petitioner that the alleged newly discovered evidence could not be discovered, notwithstanding the exercise of reasonable diligence on his part to do so. In Bersabal vs. Bernal, 13 Phil., 463, the rule laid down that where the evidence was known to the plaintiff before the institution of the action,

and it was in his power to offer it at the trial, "he is not entitled to a new trial."

Death having sealed the lips of Ciriaco Morales, his heirs, and, for that matter, the petitioner cannot now pretend to know and explain what the deceased Ciriaco Morales would have done under the circumstances, had he come across, during his lifetime and while the case was pending in the lower court, with documents and papers that he had in his possession and which may have some bearing on the case at bar. We need not mention herein the fact that the "Affidavit of Merits" accompanying the petition or motion for reconsideration is, for obvious reasons, not made and signed by Morales but by another person who had no previous connection with this case. If Ciriaco Morales only offered in evidence Exhibits A and B and other documents when this case was being tried in the lower court, it is most likely that, for some reason known to him, he refrained from and decided not to introduce in evidence the documents which are now purported to be newly discovered evidence. Moreover, as we construe the meaning of the provisions of the Rules of Court on the subject, the "Affidavit of Merits" should be made and signed by Ciriaco Morales but, as already stated, this is a physical impossibility.

Before closing, it only remains for us to state herein whether or not the documents which the petitioner is now offering as newly discovered evidence "will probably change the result if admitted." (*Aldeguer vs. Hoskyn*, 2 Phil., 500; *Garcia vs. Doncillo*, 53 Phil., 682.) We have carefully considered said documents and compared them with the exhibits presented by Ciriaco Morales during the hearing of this case in the Court of First Instance of Nueva Ecija and are strongly convinced that even if we should decide to admit them as newly discovered evidence they would not help the case of Ciriaco Morales and, consequently, would not in any manner change the result of our decision of April 23, 1947.

In view of the above, the motion for reconsideration is hereby denied.

Endencia and Felix, JJ., concur.

Motion denied.

[No. 591-R. April 23, 1947]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
MAXIMO ADORNADO, defendant and appellant

1. CRIMINAL LAW; WITNESSES; PROSECUTION NEED NOT PRESENT ALL ITS WITNESSES; UNFAIR PRESUMPTION, NOT CREATED UPON FAILURE TO PRESENT CUMULATIVE EVIDENCE.—It is not necessary for the prosecution to present all its witnesses in a case, as long as

the testimonies of those offered are sufficient to establish the case of the people beyond a reasonable doubt. Failure to present witnesses whose testimonies will be merely cumulative does not create an unfair presumption against the Government (U. S. vs. Gonzales, et al., 22 Phil., 325; People vs. Dinola, 37 Phil., 797).

2. ID.; ILLEGAL POSSESSION OF EXPLOSIVE; SEARCH WARRANT; WARRANT OF ARREST, NOT NECESSARY WHEN ACCUSED WAS CAUGHT "IN FLAGRANTI DELICTO."—As the accused was found to be in illegal possession of an explosive, and thus *in flagranti delicto*, no search warrant or warrant of arrest was necessary (rule 109, sec. 6 and rule 122, sec. 12, Rules of Court; People vs. Judge of the Court of First Instance of Batangas, G. R. No. 46361, 14 February 1929; People vs. Martin Tuijico, G. R. No. 34553; People vs. Adams, 63, L.R.A. 406, affirmed in 192 U. S. 585, 48 L. ed. 575).

APPEAL from a judgment of the Court of First Instance of Albay. Bautista Angelo, J.

The facts are stated in the opinion of the court.

Mariano Buenaventura for appellant.

Assistant Solicitor-General Gianzon and Solicitor E. Abad Santos for appellee.

LIM, J.:

The accused, Maximo Adornado, was found by the Court of First Instance of Albay guilty of illegal possession of explosives and was sentenced to suffer 6 months imprisonment, to pay a fine of ₱1,000, with subsidiary imprisonment in case of insolvency, and to pay the costs.

The appellant contends that the trial court erred in giving credence to the witnesses for the prosecution and in considering the evidence sufficient to sustain a conviction.

The evidence fully establishes that in the evening of 21 June 1941, acting upon an information received earlier by Jose Antuerpia, a special policeman of the Liguan Mines Corporation, Rapu-Rapu, Albay, that Maximo Adornado, then on his way from barrio San Miguel of the same municipality, was carrying with him three sticks of dynamite, the chief of said special police force detailed special policemen Jose Antuerpia, Catalino Olaguer, Hermogenes Padua, Magno Bandol, Severino Orles and Jose Arellano to arrest the accused. Accordingly, these special policemen went to the sitio of Panag, barrio of Liguan, municipality of Rapu-Rapu, Albay, and there intercepted Maximo Adornado, who was on his way home carrying a basket in his hands. Maximo resisted when Hermogenes Padua attempted to take the basket away from him, but while Padua was holding Maximo by the right hand, the latter moved away the basket with his left hand. At this stage of the struggle for the possession of the basket, Jose Antuerpia came nearer and wrested the basket, which was

found to contain three sticks of dynamite, identified in the records as Exhibits A, A-1, and A-2.

Questioned as to the source of this dynamite, the accused became close-mouthed and demurred that he would give his answer in court. Thereafter, the special policemen turned over these three sticks of dynamite to their chief, Dumawal, who in turn referred the matter to the Philippine Constabulary, which sent Corporal Anacleto Melleza on or about 14 July 1941 to Rapu-Rapu, Albay, for the purpose of investigating this affair.

As there could be no agreement on the true nature of the alleged sticks of dynamite, the trial court conducted an experiment in the yard of the government building. Exhibit A-1 readily caused an explosion when a dynamite cap was attached and ignited.

The testimonies of Jose Antuerpia, Hermogenes Padua and Bienvenido Barrameda were as a whole conclusive and convincing on the essential details concerning the fact that Maximo Adornado had in its possession these three sticks of dynamite at the time he was caught by surprise by the special policemen of the Liguan Mines Corporation. The alleged contradictions pointed out by counsel for appellant are so unimportant and trivial as not to constitute a ground for doubting the veracity of these prosecution witnesses (People vs. Facturan, 44 Phil., 271; People vs. Limbo, 49 Phil., 94; People vs. Otero, 51 Phil., 201).

We find no merit in the contention that the testimony of Hermogenes Padua carries no weight. It is true that out of the three witnesses for the prosecution he is the only one who has not subscribed an affidavit similar to those made by the two others appearing in pages 3 and 4 of the record and attached as supporting affidavits of the original complaint filed in the justice of the peace court of Rapu-Rapu, Albay. These were more than sufficient as supporting affidavits, and the Government need not secure the sworn statements of each and everyone of its possible witnesses in a criminal case. The original complaint (record, p. 2) as well as the information (record, p. 18) contain the name of Hermogenes Padua as a witness for the prosecution.

It is neither essential for the prosecution to present all its witnesses in a case, as long as the testimonies of those offered are sufficient to establish the case of the people beyond a reasonable doubt. Failure to present witnesses whose testimonies will be merely cumulative does not create an unfair presumption against the Government (U. S. vs. Gonzales et al., 22 Phil., 325; People vs. Dinola, 37 Phil., 797). As the accused was found to be in illegal possession of an explosive, and thus *in flagranti delicto*, no search warrant or warrant of arrest was necessary (rule 109, sec.

6, Rules of Court; rule 122, sec. 12, Rules of Court; People vs. Judge of the Court of First Instance of Batangas, G. R. No. 46361, 14 February 1929; People vs. Martin Tujico, G. R. No. 34553; People vs. Adams, 63 L. R. A. 406, affirmed in 192 U. S. 585, 48 L. ed. 575). If it is true that had Olaguer, Bandol and Orles been presented as witnesses they would have testified in favor of the accused there is nothing that could have stopped him from calling them to the witness-stand to testify on his behalf.

The basket in which the three dynamite sticks were found at the time the accused was arrested was not essential and its nonproduction in the trial was not a reversible error.

We agree with the trial court in rejecting the defense that this prosecution was only a frame-up engineered by Dumawal, the chief of the special police. The alleged motive is a mere pigment of the imagination of the accused.

This Court considers unbelievable the defense that the dynamite was taken into his home by one of the witnesses for the prosecution, when the special policemen failed to discover any dynamite during the search of the house of the accused. There was no reason nor plausible motive for the witnesses for the prosecution to misrepresent the facts. On the other hand, the witnesses for the defense, Leon Vargas and Casiano Samaniego, are both unconvincing, and their claim that they were present in the house of the accused at the alleged time of the search is unbelievable and highly improbable. Bienvenido Barrameda, landlord of the accused Maximo Adornado, gave a straightforward testimony, in consonance with the ordinary course of things. No further search of the house was needed under the circumstances.

In view of all these considerations, the judgment of the trial court is affirmed, with costs against the appellant.

It is so ordered.

Jugo and De la Rosa, JJ., concur.

Judgment affirmed.

[No. 289-R. April 25, 1947]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. IGNACIO LANDICHO, defendant and appellant

1. CRIMINAL LAW; RAPE; EVIDENCE; TESTIMONY OF OFFENDED PARTY;
CASE AT BAR.—When a woman testifies that she has been raped, she says all that need be said, to signify that this crime has been committed (U. S. vs. Ramos, 1 Phil., 81). In the case at bar, the offended party gave in full the details of how the accused did everything in his power to obtain her. The evidence of force also indicates that the accused took her in his arms to a secluded place, after he had caught her by surprise and had pulled her down from the tree. He even covered or tried to cover her mouth when she shouted for help. The rents

in her dress and her enfeebled condition prove the ordeal she has gone through during the time she had to resist the force he employed in his fruitless efforts to have carnal knowledge of her, and they indicate a violent physical struggle that taxed her strength to the utmost (U. S. vs. Villarosa, 4 Phil., 434).

2. ID.; ID.; ID.; UNCORROBORATED TESTIMONY OF OFFENDED PARTY, WHEN SUFFICIENT TO ESTABLISH GUILT OF ACCUSED.—The detestable crime of rape, in which a man shows his most heinous side, is one of the hardest to prove. The testimony of the offended party most often is the only one available to prove directly its commission; corroboration by other witnesses is seldom available. In fact, the presence of such eyewitnesses would, in certain cases, place a serious doubt as to the probability of its commission. Perforce, courts of justice are most often placed in the necessary position of having to accept such uncorroborated testimony sufficient to establish the guilt of the accused, if the same is in other regards conclusive, logical and probable.

3. CRIMINAL LAW AND PROCEDURE; EVIDENCE; WITNESSES; PROSECUTION HAS NO OBLIGATION OF PRESENTING ALL ITS AVAILABLE WITNESSES.—The prosecution has no obligation of presenting all its available witnesses as long as the evidence it offers in support of its case is sufficient and satisfactory (U. S. vs. Bragart, 28 Phil., 78).

APPEAL from a judgment of the Court of First Instance of Batangas. Daza, J.

The facts are stated in the opinion of the court.

Miguel Tolentino for appellant.

First Assistant Solicitor-General J. B. L. Reyes and *Acting Solicitor Brillantes* for appellee.

LIM, J.:

This is an appeal from a decision of the Court of First Instance of Batangas, which found the accused guilty of the crime of attempted rape, and sentenced him to suffer an indeterminate sentence of 6 months of *arresto mayor* to 2 years 4 months and 1 day of *prisión correccional*, with the accessories of the law, and to pay the costs.

We find from the evidence that between seven and eight in the morning of 26 December 1945, Maria Concepcion Mayuga, wife of Lorenzo Umali, requested her 12-years old daughter, Rosita Umali, to pick some calamansi fruits from a nearby tree growing on a lot belonging to the accused Ignacio Landicho. It was an old custom prevalent in that locality to gather calamansi fruits whenever the neighbors needed some. While Rosita was up in the tree and was reaching for some fruits, the accused Ignacio Landicho suddenly appeared, pulled her down by her feet, caught her in mid-air in his arms, and carried her to a bushy place nearby. Once in this space the accused laid her face up-

wards on the ground, kissed her several times, manhandled her breasts, raised up her dress, put out his male organ and tried to introduce it into the sexual organ of Rosita Umali, telling her simultaneously of his desire to possess her sexually. Fortunately for Rosita, the accused was unable to consummate his sexual perversity, due mainly to her resistance, as she struggled desperately with her hands and feet and continuously vociferated for help.

Leonardo Umali and Marcelino Landicho, brother and brother-in-law of Rosita, respectively, who were then casually in the immediate neighborhood, were attracted by her cries for help and hurried towards the bushy place, meeting on their way Ignacio Landicho, who was running away thenceward. They found Rosita crying and in a very weak condition, with her dress torn as a result of her struggle with the accused; when they took her to her home, they had to assist her due to her debilitated condition. As soon as Rosita reached her mother's place, she broke again into tears and after rebuking her mother for having asked her to pick those calamansi fruits, she related the details of the bestiality attempted by the accused.

When her father, Lorenzo Umali, arrived at the house a little later, she retold him her misadventure. Without losing any time the father took her to the house of Francisco Javier, the barrio lieutenant, and after informing him of the criminal acts committed by the accused, the father requested said barrio lieutenant to accompany them to the corresponding authorities for the purpose of denouncing this nefandous crime. As they missed the chief of police of Talisay at his office in the municipal building, they looked for him at his barrio residence, where they located him and related the particulars of this villainy. As a sequel, Lorenzo Umali thumb-marked the corresponding complaint before the justice of the peace (Exhibit A).

The appellant questions the jurisdiction of the trial court on account of the alleged failure of the prosecution to establish that the crime was committed within its territorial jurisdiction. We find no merit in this contention because the witnesses for the prosecution have proven that the crime was committed in Balantok, Binintiang Malaki, Talisay, Batangas. It is immaterial that the crime was committed either in Binintiang Maliit or in Binintiang Malaki, as long as it had been established that it took place within the territorial limits of the municipality of Talisay, Batangas, which admittedly is within the territorial jurisdiction of the trial court (rule 106, sec. 9, Rules of Court). The appellant himself admitted in his defense that the girl was inside his lot, which is within the barrio of Balantok,

Talisay, Batangas (t. s. n., p. 42), at the time of the initial incident, the picking of the calamansi fruits.

To the argument that it was not established that the genital organ of the accused touched that of Rosita, the following quotation from the testimony of the offended girl, correlated with other statements in the records, is conclusive as to the self-evident intention of the accused to have carnal knowledge of her:

"P. Qué hizo el acusado cuando él estaba sobre usted?—R. Se ponía boca abajo sobre mí.

"P. Porqué, que quería el acusado?—R. El quería yacer conmigo.

"P. Porqué sabe usted que era la intención del acusado?—R. Porque él estaba puesto boca abajo encima de mí y su miembro viril estaba fuera.

"P. El acusado no consiguió su deseo por la llegada de las personas que usted menciona y por los gritos de usted?—R. Sí, señor." (t. s. n., p. 10)

The weakened condition of Rosita when she was found by her brother and brother-in-law, which was immediately after the accused had left her in the bushes, testify to her resistance against the savage attack from the accused.

The evidence of force is more than sufficient, because the accused took her in his arms to a secluded place, after he had caught her by surprise and had pulled her down from the tree. He even covered or tried to cover her mouth when she shouted for help. The rents in her dress and her enfeebled condition prove the ordeal she has gone through during the time she had to resist the force he employed in his fruitless efforts to have carnal knowledge of her, and they indicate a violent physical struggle that taxed her strength to the utmost (U. S. vs. Villarosa, 4 Phil., 434).

When a woman testifies that she has been raped, she says all that need be said, to signify that this crime has been committed (U. S. vs. Ramos, 1 Phil., 81). Rosita gave in full the details of how Ignacio Landicho did everything in his power to obtain her. The detestable crime of rape, in which a man shows his most heinous side, is one of the hardest to prove. The testimony of the offended party most often is the only one available to prove directly its commission; corroboration by other eye-witnesses is seldom available. In fact, the presence of such eye-witnesses would, in certain cases, place a serious doubt as to the probability of its commission. Perforce, courts of justice are most often placed in the necessary position of having to accept such uncorroborated testimony sufficient to establish the guilt of the accused, if the same is in other regards conclusive, logical and probable. In the case at bar, Rosita's testimony was corroborated by circumstances that

are satisfactory and convincing. Her dress was rent, she shouted for help, she was found in a weakened condition, she immediately related the facts to her mother upon her arrival home, reiterated the same to her father soon after and then again to the barrio lieutenant, about an hour thereafter. The accused himself was seen running away from the place where he attempted to take advantage of her; he had to desist due to her resistance and vociferous clamors for help (U. S. vs. Javier et al., 31 Phil., 236).

The prosecution has no obligation of presenting all its available witnesses as long as the evidence it offers in support of its case is sufficient and satisfactory (U. S. vs. Bragat, 28 Phil., 78). The testimony of Leonardo Umali on the facts observed in connection with the commission of this crime forms part of the *res gestae*, for it refers to facts that occurred immediately subsequent to the act (rule 123, sec. 33, Rules of Court). We cannot doubt the sincerity of Lorenzo Umali, for it is unbelievable that to give vent to an alleged grudge against the accused, which certainly has not been satisfactorily established, he would resort to a measure that would necessarily cover his own daughter with the infamous stigma of having been the victim of the crime of rape, which although attempted may still cause her grief and embarrassment. There is no proof in the records that Lorenzo Umali is so degenerated and wicked that he would sacrifice the future happiness of his daughter to satisfy a personal urge for a petty vengeance.

We concur, therefore, with the finding of the trial court that the accused is guilty of the crime of attempted rape. As the penalty of *reclusión temporal* provided for the consummated crime (art. 335, Rev. Penal Code) should be reduced to two degrees lower (art. 51, Rev. Penal Code), and there are no aggravating or mitigating circumstances present, the medium of this reduced penalty should be applied, which is the medium of *prisión correccional*, or from 2 years, 4 months and 1 day to 4 years and 2 months. Under the provisions of the Indeterminate Sentence Law (Act 4103, as amended), the minimum should range from 1 month and 1 day to 6 months of *arresto mayor*. We disagree with the Solicitor General in his contention that the maximum punishment imposed by the trial court was not within the range above indicated.

In view of the foregoing, the judgment is affirmed, with costs.

It is so ordered.

Jugo and *De la Rosa, JJ.*, concur.

Judgment affirmed.

[No. 158-R (L-540). April 29, 1947]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, vs.
ENRICO GEcole ET AL., defendants. ENRIQUE GEcole and SEGUNDO TOLENTINO, appellants.

1. CRIMINAL LAW; ROBBERY; PRE-EXISTENCE OF PROPERTY ROBBED, PROOF OF; DUTY OF THE DEFENSE TO CONTRADICT SUCH PROOF.—Once the pre-existence of the property robbed is established, it is not incumbent upon the prosecution, but upon the defense to present the persons from whom the property alleged to have been robbed was borrowed to contradict or refute, if they could, the testimony of the offended parties to that effect.
2. ID.; ID.; "ALIBI" AS A DEFENSE.—The defense of *alibi* which, as has been often repeated, is one of the weakest defenses that can be resorted to by the accused, can not prosper where the accused have been positively and properly identified by the offended parties and their witnesses.

APPEAL from a judgment of the Court of First Instance
of Iloilo. Quisumbing, J.

The facts are stated in the opinion of the court.

Eduardo F. Elizalde for appellants.

Assistant Solicitor-General Alvendia and *Solicitor Sian*
for appellee.

FELIX, J.:

In the Court of First Instance of Iloilo, Enrico Gecole, Enrique Gecole, Segundo Tolentino, Generoso Lagoting alias Galila and Leon Castor were prosecuted for the crime of robbery in band alleged to have been committed on March 15, 1946, in confederation and together with Ignacio Casten, Badong N., Peping N., Dimas Castor, Daniel N., Serafin N., Bering N. and John Doe who were then still at large. After hearing and for lack of sufficient identification, the case was dismissed with regard to Enrico Gecole, Generoso Lagoting and Leon Castor, and defendants Enrique Gecole and Segundo Tolentino were found guilty of the crime they were charged and sentenced each to a penalty ranging from 4 years and 1 day of *prisión correccional* to 8 years and 1 day of *prisión mayor*, with the accessories of the law, to indemnify jointly and severally the spouses Remigio Tacuyan and Soledad Laurente in the sum of ₱1,526.50 and to further pay one-fifth of the costs. From this decision these two defendants appealed to the Supreme Court that, after the recreation of the Court of Appeals, certified the case to this Court.

In this instance, counsel for appellants maintains that the trial court erred: (1) in finding that the offended parties lost ₱1,505.50 and some jewels; (2) in finding that the accused were in the house of the offended parties at

the time of the commission of the crime; (3) in not finding that the accused were in Iloilo all the time from March 13 to 16, 1946; and (4) in being prejudiced against the accused.

The facts of the case are in a nutshell the following: At about 7 o'clock in the evening of March 16, 1946, Remigio Tacuyan and his family were in their house located at barrio Constancia, municipality of Jordan, in the Province of Iloilo. Remigio Tacuyan heard their dogs bark and went downstairs where he was met by Segundo Tolentino and Enrique Gecole, then accompanied by four others, all of whom were armed. Segundo Tolentino and Enrique Gecole pointing at him a carbine and a revolver, respectively, told him to go up, which he did, followed by them, while the rest of the band remained posted around the premises. When Remigio Tacuyan reached the parlour, Segundo ordered the inmates thereof, among whom were the wife of Remigio named Soledad Laurente, not to make a false move for, otherwise, they would be killed. Enrique Gecole pretending to be looking for the wife of a Chinaman, entered the bedroom of the house and ransacked it. In a wardrobe he found ₱1,506.50 in a package, and a necklace and a ring worth ₱15 and ₱5, respectively. While the robbers were searching the house, Concordia Talaban and a companion named Oning arrived, and they, too, were made to sit with the other inmates, watched by Tolentino, while Gecole continued his work of depredation. When they found no more valuables on which to prey, they went down the house with the loot, and once downstairs the robbers fired two shots in the air.

There seems to be no question that the crime prosecuted in this case has been committed. The only defenses interposed by appellants in this instance were: (a) that concerning the pre-existence of the property robbed; and (b) that of *alibi*, for they claim that at the time of the commission of said crime they were not in the municipality of Jordan but in the municipality of Iloilo, Iloilo.

It is true that the evidence produced to establish the losses consists of the testimonies to that effect of the offended parties, but ordinarily that is the usual way of proving the nature, quantity and worth of the property robbed. It is also true that the spouses Remigio Tacuyan and Soledad Laurente seem to be poor people, but they explained the source of that money, the reason of their accumulation and how they were to invest said amount. Once the pre-existence of the property robbed is thus established, it is not incumbent upon the prosecution, but upon the defense to present the persons from whom that money was

borrowed to contradict or refute, if they could, the testimony of the offended parties.

As to the defense of *alibi* which, as has been often repeated, is one of the weakest defenses that can be resorted to by the accused, it can be stated that:

"An *alibi* should be proved by probable evidence which reasonably satisfies the court of the truth of such a defense * * *" (U. S. vs. Oxiles, 29 Phil., 587).

"The testimony of three witnesses bearing on the *alibi*, set up by defendant's counsel, to prove that on the day and at the hour the crime was committed Bañagale was in Biñan, some distance from San Pablo, held insufficient to invalidate the direct and circumstantial evidence which clearly showed he was in San Pablo and did take part in the perpetration of the homicide. * * *" (U. S. vs. Bañagale, 24 Phil., 69).

"Their own declarations, in face of direct and positive testimony of witness for prosecution, held not to establish defense of an *alibi* with sufficient strength to raise a reasonable doubt of the presence of defendants at scene of the crime. (U. S. vs. Garcia, 26 Phil., 289.)

"Where the defendants tried to prove they were in another town on the night and at the time of the murder, the *alibi* held unworthy of credence on account of the clear, explicit and positive identification of the witness for the prosecution. (U. S. vs. Hudieres, 27 Phil., 45.)

See also People vs. Federico de la Cruz, G. R. No. L-133, April 30, 1946; People vs. Cabanting, 49 Phil., 482; People vs. Medina, 59 Phil., 330.

On the strength of the evidence of record and the preceding authorities, we are satisfied beyond reasonable doubt that appellants committed the crime they are charged in the amended information, with the attendance of the aggravating circumstances of in band, night time and dwelling. They have been positively and properly identified by the offended parties and by Concordia Talaban, and the court has no ground to doubt their testimony.

Wherefore, appellants are found guilty of the crime they are prosecuted in this case and, in accordance with the provisions of articles 14 (Nos. 3 and 6), 46, 64 (No. 3) and 294 (No. 5) of the Revised Penal Code, and of the provisions of Act No. 4225, each of the appellants is sentenced to undergo the indeterminate penalty of from 6 months of *arresto mayor* to 6 years, 10 months and 1 day of *prisión mayor*, to indemnify jointly and severally the offended parties in the sum of ₱1,526.50, and to pay one-half of the costs. With this modification, the decision appealed from is hereby affirmed.

It is so ordered.

Torres and Endencia, JJ., concur.

Judgment modified.

[No. 714-R. Abril 29, 1947]

**EL PUEBLO DE FILIPINAS, querellante y apelado, contra
CIRIACA MAGANIT, acusada y apelante**

1. DERECHO PENAL; HOMICIDIO; PRUEBAS; LA DECLARACIÓN "ANTE MORTEM," SU VALIDEZ O ADMISIBILIDAD.—La declaración *ante mortem* Exhibito B es de dos partes. En la primera no consta el estado patológico del herido, pero si en la segunda, que viene a ser continuación de aquella, porque en la toma de ambas apenas hubo solución de continuidad. Dos médicos, por lo menos, presenciaron la toma de dicha declaración y testificaron sobre el gravísimo estado en que se hallaba el herido, el cual falleció escasamente una hora desde su admisión en el hospital. En este caso, aun sin su segunda parte dicha declaración era admisible como prueba, porque no era necesario para su validez y admisibilidad que el declarante haya manifestado expresamente que ha perdido la esperanza de curarse, porque todas las circunstancias conducen a la conclusión de que al tiempo de hacer la referida declaración no esperaba sobrevivir de su herida, de la cual murió minutos después.
2. ID.; ID.; ID.; EL MÓVIL DE LA AGRESIÓN, CUANDO NO ES NECESARIO PROBARLO.—Cuando la misma acusada admite haber inferido la herida fatal que causó la muerte del occiso, no era necesario probar el móvil, sobre todo habiendo sido hallada culpable, no de asesinato de que estaba querellada sino de simple homicidio, porque de su parte estaba el demostrar que no era responsable de este crimen, por cualesquier de las circunstancias justificativas o eximentes previstas en la ley, entre ellas, su interpuesta defensa legítima que, por no haber sido acreditada, desde luego no produjo el efecto de librirla de las consecuencias de su acto criminal. (*Pueblo contra Ragsac*, 61 Jur. Fil., 154; *Pueblo contra Ramponit*, 62 Jur. Fil., 306.)

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Laguna. Sandoval, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

Estanislao A. Fernández en representación del apelante.
El Primer Procurador General Auxiliar J. B. L. Reyes
y el *Procurador Barcelona* en representación del apelado.

DE LA ROSA, M.:

Procesada Ciriaca Maganit por asesinato, en virtud de querella fiscal, el Juzgado de Primera Instancia de la Provincia de Laguna la halló culpable de homicidio, sin ninguna circunstancia modificativa, y la condenó a la pena indeterminada de no menos de 8 años de prisión mayor y no más de 14 años, 8 meses y 1 día de reclusión temporal, con las accesorias de ley correspondientes, a indemnizar a los herederos del occiso Moisés Tobías en la cantidad de ₱2,000, sin prisión subsidiaria en caso de insolvencia, y a pagar las costas.

A las 7 pasadas de la noche del 14 de septiembre de 1941, Honorio Elbo vió a Moisés Tobías caerse a la entrada de la oficina de correos del municipio de Santa Cruz, de la

Provincia de Laguna, avisó de ello a Crisanta Alfonso a quién la creía pariente de aquél y a requerimiento de una hija de ésta, llamó al Dr. Gregorio Ortañez el cual acudió al lugar; encontró a Tobías en el lado izquierdo de la puerta de la expresada oficina, en "posición reclinada;" le aplicó un tratamiento de emergencia; llevóle al hospital provincial donde los médicos, principalmente la residente Dra. Emilia Osuna, hallaron que tenía una herida en el pecho causada por un arma corto-punzante de pronóstico mortal, y, al mismo tiempo que trataban de salvarle, administrándole el remedio que el caso requería; la policía que había sido avisada del suceso le tomaba la declaración Exhibito B, cuya traducción al inglés, reza:

**"STATEMENTS OF MOISES TOBIAS IN THE INVESTIGATION OF POLICEMAN
M. NEPOMUCENO**

"Q. Who stabbed you?—A. Ciriaca Maganit, Tomas Flores' paramour.

"Q. With what did she stab you?—A. Probably with a knife.

"Q. Why did you go towards the post-office?—A. Ciriaca Maganit has sent for me.

"Q. Was there any ill-feeling between you and Ciriaca?—A. No, sir.

"Q. In what part of the street did Ciriaca stab you?—A. In the vicinity of the door.

"Q. Did anybody see Ciriaca Maganit when she stabbed you?—A. Nobody.

"Q. What relation do you have with Ciriaca Maganit which caused her to send for you?—A. She had been my sweetheart for a long time.

"Q. Are all your statements in this document true?—A. Yes, sir.

QUESTIONS OF CHIEF OF POLICE E. Z. DEL MUNDO

"Q. How do you feel about your wound?—A. It may cause my death, my body is already numbed.

"Q. Are you still of sound mind and do you understand this declaration of yours?—A. Yes, sir.

"Q. Can you sign your declaration?—A. No, sir, I am already exhausted."

"His mark
MOISES TOBIAS"

La asistencia, sin embargo, de los médicos del hospital no salvó a Tobías de la muerte, que ya la presentía, y allí falleció, escasamente una hora desde su admisión a causa de su herida en el pecho, expidiéndose después de la autopsia de su cadáver el certificado médico Exhibito A, que dice:

**"COMMONWEALTH OF THE PHILIPPINES
DEPARTMENT OF PUBLIC INSTRUCTION
BUREAU OF HEALTH
LAGUNA PROVINCIAL HOSPITAL
SANTA CRUZ, LAGUNA**

September 15, 1941

To Whom It May Concern:

This is to certify that Moises Tobias was brought to this Hospital as an emergency case at 7:30 p. m. on September 14, 1941, and

expired at 8:20 the same evening. Autopsy performed the following day revealed the following findings:

1. Stab wound at the left second interspace, penetrating the upper left lobe of the lungs and the right ventricle; also profuse hemothorax of the left side.

R. KAMATOY
Chief of the Hospital
By: (Sgd.) EMILIA C. OSUNA
Intern-Physician"

En esa misma noche Ciriaca Maganit, ante el jefe de policía Del Mundo, prestó la declaración Exhibito C en cuya traducción al inglés, se lee:

Q. "What extraordinary thing have you done to Moises Tobias this night of September 14, 1946?—A. I stabbed him with a knife at about 7:00 o'clock in the evening.

"Q. Why did you stab Moises Tobias with a knife?—A. He entered the door of the house where I live and upon approaching me, he embraced me and asked me to give him a chance."

Y en esa noche también, comisionado por su jefe, el policía Celedonio Palla que declaró por la defensa inspeccionó el sitio que Maganit le designara dentro del solar de su casa, entre ésta y un pono de naranjita, donde, según ella, apuñaló a Tobías, en el que vió el cortaplumas Exhibito D, a un metro y medio de distancia de la escalera de la cocina, y el par de chinelas Exhibito 2, pero no descubrió sangre o manchas de sangre, ni tampoco en la calle F. Sario, en todo el trayecto de allí a la oficina de correos, sino solamente en el preciso lugar donde fué hallado Tobías.

En 15 de septiembre de 1941, el policía Gregorio Balasoto, de Santa Cruz, entregó a su jefe Del Mundo el volante Exhibito E, que el 12 de dicho mes le había dado Tobías para Maganit, escrito en tagalog, de puño y letra de aquél (n. t. vol. I, pág. 65), de este tenor:

"Tinanggap moba Ang Apat napiso Kay Serio na ipinahihingi mo raw ng gabi ng lingo. Ypag katiuala Ang sagot sa may dala nito."

El mismo Balasoto en el curso de su testimonio aseveró que Tobías y Maganit eran amantes y, en ocasiones, se valían de él para comunicarse; que el 12 de septiembre de 1941, Tobías le entregó el volante Exhibito E para Maganit, pero que se traspapeló entre varias notificaciones procedentes del Juzgado, que tenía que servir, así es que, habiéndola visto a las 6 de la tarde del 14 cerca de su casa, la llamó (n. t. vol. I, pág. 86) y comunicóla su contenido (n. t. vol. I, págs. 63-64); que, después de contestarle que no había recibido el dinero que le mandó Tobías, Maganit le rogó que le llamara y así lo hizo, diciéndole, "que el gobernador quería hablar a él (n. t. vol. I, pág. 66); que por convenio con Tobías llamaba a ella gobernador para evitar sospechas, porque el era casado; que al día siguiente del suceso encontró entre sus papeles el Exhibito E y lo

puso en manos de su jefe Del Mundo; y que con anterioridad al expresado día 14, Tabique (Sergio), que fué muchacho de Tomás Flores y Ciriaca Maganit, le dió un ticket de cine que élla enviaba a Tobías y se lo entregó a éste (n. t. vol. I, pág. 68).

Ciriaca Maganit, que en su affidavit Exhibito C dijera que había apuñalado dentro de su casa a Tobías, al testificar en su propia defensa, negó haber sostenido relaciones amorosas con éste, y declaró que, en la ocasión de autos, dando de comer a sus perros, vió a Tobías que entraba en el solar de su casa por la puerta trasera, y le dijo ". . . . porqué has entrado en la puerta; salga de aquí" (n. t. vol. III, pág. 201); pero, en vez de contestar, se dirigió hacia ella y la alcanzó mientras se iba a la escalera, la cogió de la mano y abrazó, beso y pidióla "oportunidad", que no le concedió, al contrario, amenazóle con gritar, más advirtióla "si gritas vas a morir"; y, como tratara de tumbarla, se acordó que tenía en el bolso de su chal (shawl) un cortaplumas, lo sacó, le apuñaló para que la soltara y, efectivamente, al sentirse herido, se echó a correr, pasando por la misma puerta por donde entró. Hizo estas admisiones:

(a) Que hacia 14 años que conocí a Tobías en la casa de la suegra de ella, y le mostraba a él "buenos tratos," porque esta le dijo que él atendía un asunto de su cuñado—de la testigo;

(b) Que le vió dos veces durante el mes de agosto de 1941, la primera, mientras ella venía del mercado público, en que llamada por él, "Akang, Akang, esperame," se paró y nególe una cita que pedía (n. t. vol. III, págs. 199-200), y, la segunda, fué, según ella, en "R. Una tarde a eso de las 6 yo cerraba la ventana de nuestra casa, he oído su silbido" (n. t. vol. III, pág. 200);"

(c) Que dos semanas antes del 14 de septiembre de 1941, Sergio Tabique se fué dos veces a su casa enviado por Tobías, y rechazó las citas que este la rogaba (n. t. vol. III, Pág. 208);

(d) Que "R. El cortaplumas estaba colocado a una distancia de las chimelias, en esta forma: (La testigo pone sus dos dedos pulgares, derecho e izquierdo, en una línea recta, que mide una distancia, según calcula, de 1 pie y 1/4 y coloca un lápiz, que representa el cortaplumas, y se calcula una distancia de menos de un pie.) (n. t. vol. III, pág. 221);

(e) Que "R. Dentro de la casa estaban mis cuatro hijos.

"P. Se refiere usted a Crisanto, que tiene 15, años de edad?—R. Sí, señor. (n. t. vol. III, págs. 222-223);

(f) Que, "P. Aquella luz que usted mencionó que alumbraba el sitio marcado con la letra "m", donde estaba colocada la luz en la noche de autos?—R. Dentro de nuestra cocina; en el zaquizami de nuestra cocina.

* * * * *

"P. Siguió él abrazandola y besándola?—R. Sí, señor.

"P. No gritó usted para pedir auxilio?—R. No grité. (n. t. vol. III, pág. 231); y,

(g) Que, P. Además de aquel ruido que procedían de sus hijos de usted, ha oido usted algún otro ruido?—R. Sí, señor; en el salón de baile.

* * * * *

"P. No oyó usted los ladridos de perro?—R. El perro a quien yo daba de comer y los otros dos perros ladran.

"P. Y aquellos ruidos que producían los perros de usted, ninguno de los hijos de usted bajó de casa para ver lo que ocurría?—R. No, señor; ninguno.

* * * * *

"P. Aquel salón de baile, como dista del lugar dónde Moisés Tobías le había abrazado en el solar de usted?—R. Desde este banco hasta aquel tabique (se calculan en 12 metros).

* * * * *

"P. Qué cubría entre el lugar donde le estaba abrazando el occiso y el sitio donde venían las conversaciones que usted oía que venía del salón de baile?—R. Mediaba un tabique con ventanas.

"P. Tabique con ventanas del edificio del cabaret?—R. Tabiques.

"P. De qué edificio?—R. Del cabaret.

"P. Estaba abierta aquella ventana que daba frente al lugar donde estaban usted y el occiso?—R. No estaba abierta completamente.

"P. Veía usted la luz dentro del cabaret?—R. Yo no veía la misma luz; solamente alumbraba la luz.

"P. Estaba ya encendida la luz que estaba en el sitio donde estaba la ventana que daba frente al sitio donde estaba usted y el occiso?—R. Sí, señor, ya había luz." (N. t., págs. 233-234)

Infiérence de las pruebas (1) que para Maganit la peculiar manera de silbar de Tobias era familiar, y por eso que enseguida conoció que él estaba frente a su ventana, en la calle; (2) que Balasoto servía a los dos de intermediario y Sergio Tabique, por lo menos, dos veces llevó a Maganit recados de Tobias, y el apodo Serio que se lee en el volante Exhibito E, a quien éste confió los P4 que envió a aquella, corresponde a Sergio Tabique; (3) que la preparación del volante Exhibito E está por encima de toda sospecha, porque no pudo haber sido escrito por Tobias sino antes de, y no durante, su estancia en el hospital, en donde sólo imprimió su marca digital en el Exhibito B, porque ya le faltaban fuerzas para escribir su nombre; y (4) que ni en el sitio señalado por Maganit al policía Palla, como el de autos, ni en la calle F. Sario, a lo largo del trayecto desde ese lugar hasta la oficina de correos, había sangre o manchas de sangre, sino únicamente en el sitio donde cayó Tobias.

La forma como Maganit describió la colocación del cortaplumas Exhibito D, con el cual apuñaló a Tobias, y el par de chinelas Exhibito 2, que según ella usaba, fué, en la bien escrita decisión del Juzgado *a quo*, objeto de esta atinada observación:

"In the fourth place, were it true that a struggle took place between her and the deceased, it is extremely remarkable that her pair of slippers (Exhibit 2) should have been recovered, immediately after the crime, lying side by side barely a foot away from each other, with fanknife (Exhibit D), also a foot distant from each slipper, the three forming, so to speak, a triangle, with the knife serving as the apex. Had the accused thrown the knife while making her exit in the direction of her husband's drug store on A. Regidor Street, immediately after the killing, while her slippers fell from her feet when she was being embraced by the deceased, as claimed by her, it is inconceivable that said articles should afterwards be found lying almost side by side in the triangular position above described. The finding of the slippers and the knife

in such orderly fashion patently shows that the alleged struggle between her and the deceased was a mere product of her imagination, concocted to tally with her subsequent plea of self-defense."

Teniendo en cuenta la edad del occiso, 64 años, su estado civil, casado, sus relaciones íntimas con la acusada y que acudió a la llamada de ésta en esa noche del suceso, no es de creer que cual un sátiro trataría de abusar de ella, por la fuerza. Ello también se desprende del testimonio de la misma Maganit, que asegura:

"P. Y que pasó después?—R. Cuando el trató de tumbarme, yo me acordé que en el pañuelo que yo llevaba tenía un cortaplumas dentro del bolso.

"P. Y qué pasó?—R. Entonces lo que hice era sacar el cortaplumas del bolso de la pañuelita y le apuñalé a él para que me soltara.

"P. Y cuál era la posición relativa de usted con Moisés Tobías cuando usted le apuñaló? Haga el favor de demostrar gráficamente. Vamos a suponer que yo era Moisés Tobías, sírvase demostrar, con el permiso del Juzgado, gráficamente, su posición relativa, cuando usted apuñaló a Moises Tobías.—R. Moisés Tobías me agarró con su mano, colocada sobre el hombro izquierdo, y con la palma de la mano derecha cogió mi nuca, y con la otra mano izquierda me tenía cogida la cintura. (Ciriaca Maganit colocó su mano izquierda en la cintura del abogado Fernández y también la mano derecha, extendiéndose hasta la parte trasera de la cintura.)

"P. Y cómo le apuñaló usted?—R. Le apuñalé así (la acusada se levanta de la silla, levanta su mano derecha, apuñalando al abogado Fernández hacia el lado izquierdo superior del pecho).

"P. Y la distancia entre el cuerpo de usted y Moisés Tobías, como estaba?—R. Tenía esta misma distancia (se calcula en seis pulgadas, poco más o menos).

"P. Estaba usted de pie, o no?—R. Estábamos de pie.

"P. Le tocó usted a Moises Tobías—R. Sí, señor.

"P. Según el certificado médico, le tocó a Moisés Tobías en el lado izquierdo superior de su pecho, qué hizo Moisés Tobías después de haberle usted apuñalado?—R. Despues de haberle yo dado la puñalada, Moisés Tobías puso su mano derecha sobre su pecho.

"P. Cuántas veces apuñaló usted a Moisés?—R. Una vez solamente.

"P. Si usted hubiese querido apuñalarle dos veces, pudo usted haberlo hecho?—R. Sí, señor.

* * * * *

"P. Y después de haber usted apuñalado a Moisés Tobías, qué hizo él, o a dónde se dirigió él?—R. Moisés Tobías se echó a correr, pasando por la misma puerta por donde entró." (N. t. vol. III pág. 202.)

Maganit dice que en el momento de apuñalar a Tobías éste le cogía la nuca con la palma de la mano derecha, y con la mano izquierda sujetaba su cintura. Se observará que esta no es la manera de echarla al suelo. Si realmente era la intención de Tobías derribar y poseerla de grado o a la fuerza es extraño que se haya mantenido a seis pulgadas de distancia de ella, agarrando simplemente su nuca y cintura sin oprimir su busto, ya que dice que le abrazaba, alzarla, inclusive, para acostarla en el suelo. Naturalmente, con las manos completamente libres, sin dificultad alguna pudo sacar, abrir su cortaplumas de abanico, la

longitud de cuyo filo es de $4\frac{1}{2}$ pulgadas, asestar una puñalada certeramente dada en el pecho de Tobías horadandole el corazón. Además, hay estas circunstancias que hacen inverosímil este pretendido intento de violación en el solar y a unos cuantos metros de la escalera de la casa de Maganit, situada en la calle F. Sario: (a) en esa noche, sus cuatro hijos, uno de ellos de quince años de edad, estaban todos dentro de la casa, podían acudir y estar a su lado, con llamarles, y no les llamó, (b) había gente en el salón de baile contiguo, que sólo dista unos 12 metros del sitio donde estaban y al través de cuya ventana entreabierta, que daba al solar, se oía a los que conversaban dentro; según ella, de modo que la era sumamente fácil frustrar los deseos de él, si la quería violar, con lanzar gritos de socorro que hubieran sido oídos por los que estaban en el salón y, sin embargo, no los lanzó; y (c) el lugar no era propio para la ejecución de tal acto, porque, por la claridad que en él se esparcía de las luces del salón de baile, que debían ser potentes, y de la casa, que se filtraba del zaquizami, y por su proximidad a la calle y la puerta de entrada en el solar, estaba expuesto a la vista de los vandales que por ahí pasaran, de cualquiera que se asome a la ventana del salón y de sus mismos hijos que, atraídos por los ladridos de sus perros, trataran de averiguar su causa.

La conclusión a que ha llegado el Juzgado *a quo* de que el suceso tuvo lugar en las inmediaciones o a la puerta de la oficina de correos, situada en la esquina de las calles F. Sario y Bonifacio, a 119 metros de la casa de Maganit, está fundada en hechos y fuertes indicios, entre ellos, (a) el no haber sangre en el lugar apuntado por la acusada como el del suceso, ni tampoco a lo largo del trayecto desde allí hasta la oficina de correos, sino únicamente en el sitio donde estuvo postrado Tobías, (b) el cambio de testimonio de Maganit, la cual en su affidavit Exhibito C, informó al jefe de policía Del Mundo, a raíz de la ocurrencia, de que esta sucedió en su casa, en tanto que, al declarar en la vista de este asunto, dijo que la misma acaeció en el solar, a unos cuantos metros de la escalera de la cocina de su casa, y (c) la declaración *ante mortem* de Tobías, en la que manifiesta que fué apuñalado en las cercanías de la puerta de la oficina de correos. Más, descartada la defensa propia contra una pretendida agresión injusta, la determinación exacta del lugar donde Maganit apuñaló a Tobías carece de materialidad, porque, si ella le atacó sin causa justificativa o eximente de responsabilidad, dondequiero que haya realizado el ataque, ha cometido el delito de homicidio, de que la halló culpable el Juzgado *a quo*.

Se impugna en el alegato de la apelante la declaración *ante mortem* Exhibito B, por el fundamento de que, consis-

tiendo de dos partes, en la primera no consta el estado patológico de Tobías cuando otorgó la misma. En este, no se debe perder de vista que en la toma de la primera y segunda partes del Exhibito B apenas hubo solución de continuidad, por haber llegado el jefe de policía Del Mundo instantes después que el policía Macario Nepomuceno terminara de tomar su primera parte, en la cual, notando aquél que algo faltaba, la completó haciendo las preguntas que constituyen la segunda parte, autorizada también con la marca digital de Tobías. Por otra parte,

"No es necesario para la validez o admisibilidad de la declaración de un moribundo que el declarante expresamente manifieste que ha perdido toda esperanza de curarse; es suficiente que las circunstancias sean tales que lleven inevitablemente a la conclusión de que al tiempo de hacerse la declaración el declarante no esperaba sobrevivir la herida de la que en realidad falleció." (Sílabo, Pueblo *contra* Ancasan, 53 Jur. Fil., 831.)

En el presente caso, Tobías declaró en presencia de varios médicos, entre ellos los Dres. Ortañez y Osuna, quienes afirmaron su estado gravísimo entonces, tanto que según el primero, ya no podía arrojar su firma, así es que tuvo que estampar su marca digital en el Exhibito B, y, de acuerdo con el certificado médico Exhibito A, expedido por la segunda, falleció poco después, a las 8:20 de esa noche del suceso.

Se arguye que no se ha probado el móvil de la agresión. En este asunto, en que la misma acusada admite haber inferido la herida fatal que causó la muerte de Tobías, no era necesario probar el móvil, sobre todo habiendo sido hallada culpable, no de asesinato de que estaba querellada sino de simple homicidio, porque de su parte estaba el demostrar que no era responsable de este crimen, por cualesquier de las circunstancias justificativas o eximentes previstas en la ley, entre ellas, su interpuesta defensa legítima que, por no haber sido acreditada, desde luego no produjo el efecto de librirla de las consecuencias de su acto criminal. (Pueblo *contra* Ragsac, 61 Jur. Fil., 154; Pueblo *contra* Ramponit, 62 Jur. Fil., 306.)

Se confirma la sentencia apelada, con las costas a la apelante.

Así se ordena.

Jugo y Lim, MM., están conformes.

Se confirma la sentencia.

DECISIONS OF THE SENATE ELECTORAL TRIBUNAL

[Case No. 1. April 19, 1947]

PROSPERO SANIDAD ET ALS., protestants, vs. JOSE O. VERA
ET ALS., protestees

1. ELECTIONS; ANNULMENT; TERRORISM AND FEAR.—An election is not to be held invalid except as a last resort, or as stated in *Batturs vs. McGary* (1 Brewster, 162) the courts have the power to reject the entire poll, but only in extremest case.
2. ID.; ID.; EVIDENCE; OFFICIAL ENTRIES.—Section 35 Rule 123, of the Rules of Court, providing that "entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty especially enjoined by law, are *prima facie* evidence of the facts therein stated" does not guaranty absolute verity to the contents of official records. It is a recognized requirement for its application that "the declarant or person making the entries must have sufficient knowledge of the facts by him entered." (Wigmore's Pocket Code of Evidence, sec. 1097, p. 253.) When the truth of official entries is denied and is precisely in issue, they can have probative value only to the extent that the declarant or person making the entries had talked on his personal knowledge, and not upon information received from others. In the latter case, and in cases where the entries merely represent the opinion or conclusions of the declarant, no probative value can attach.
3. ID.; ID.; ID.—The mere fact that reports are required to be made by statute or public regulation does not render them admissible where they are otherwise incompetent—as where they are hearsay and not part of the *res gestae* of the transaction in suit.
4. ID.; ID.; ID.—For threats and intimidation to affect the result of an election or the validity of the votes cast therein, they must be such as to instill in the mind a real fear, sufficient to restrain the free expression of the voter's will.
5. ID.; ID.; ID.—JUDICIAL NOTICE; HUKBALAHAP, AS SUBVERSIVE ORGANIZATION.—The Hukbalahap organization is subversive in character and would achieve its aims by any means, fair or foul.
6. ID.; ID.; ID.—It is a well established rule that whenever the great body of the voters have been prevented by intimidation and threats from freely exercising their franchise the entire vote should be rejected.
7. ID.; ID.; ID.—It is just as desirable that votes obtained through coercive method should not be counted, but being incapable of detection it has been necessary to adopt a more heroic treatment. The courts have therefore laid down the rule that when fraudulent votes are so mixed up with honest votes that it cannot be determined how many are honest and how many are fraudulent, the returns shall be destroyed. (*State vs. Fulton*, 42 Kan, 164.)
8. ID.; ID.; ID.; CASE AT BAR.—Where, as in the present case, a political, economic and military organization dominating whole province and supporting a political party and the candidates thereof have, privately and in public meetings during the whole

period of the election campaign, threatened and intimidated the people not to vote for the candidates of the opposite party but for those supported by said organization otherwise they would be killed; where, in order to instill in the mind of the people that these threats would be carried out, the members of this organization kidnapped and murdered well-known leaders of the opposite party; where, due to fear of being kidnapped, murdered or maltreated the leaders of the opposite party had not been able to campaign openly and publicly for their candidates nor had they been able to go to the barrios to make even secret campaigns; where, because of these threats even the candidates, themselves, of the opposite party had not been able to hold public meetings in any part of the province nor had they been able to go there to campaign for their own candidates; where, in order to make more effective their terroristic campaign, and taking advantage of the inability of the Military Police to station fixed number of men in all municipalities and election precincts because the whole force consisted of only nine companies of 144 enlisted men and 5 officers each company, said organization formed 45 squadrons of armed members, each squadron consisting of 100 to 150 armed men with fighting experience, who went from one place to another throughout the whole province to spread their threats, many persons sympathizing with the opposite party had to evacuate from their homes in the barrios to seek refuge in the town proper where the Military Police could render them some degree of protection, while many others went as far as the City of Manila; where, on election day itself armed groups of this organization went from one precinct to another and reiterated their threats to the electors on their way to the polls, while other armed squadrons roamed the whole province; where, after elections, several persons who were discovered to have voted for the candidates of the opposite party were kidnapped and murdered, and their corpses found floating on the river; and where the election returns show that the standard bearer of the opposite party received only 14 per cent, and some candidates for Senators of the same party as low as 4 per cent of the total number of votes cast, while the standard bearer and senatorial candidates of the party supported by this lawless organization polled 86 per cent of the total number of votes cast, it is safe to conclude that the threats and intimidation waged by said lawless organization have prevented the free and untrammelled expression of the popular will in the elections in said province, and the tribunal should declare such elections null and void.

9. **ID.; CONSTITUTIONAL LAW; SOVEREIGNTY RESIDES IN THE PEOPLE.**—We have ordained in our Constitution that sovereignty resides in the people and that all government authority emanates from them. The people exercise under that same Constitution their sovereign power by means of suffrage. But their exercise of that power will be a myth if suffrage is not voluntary and free.
10. **ID.; ID.; ELECTORAL TRIBUNAL.**—The Electoral Tribunal must never for a moment permit itself to be swayed by political considerations. The people ratified the Constitution creating this body with three justices of the Supreme Court to sit in judgment in conjunction with three Senators of the majority party and three Senators of the minority party. This clearly shows that in deciding an election contest it is the people's will that this Electoral Tribunal should act in accordance only with law and justice.

ORIGINAL CASE of the Electoral Tribunal for the Senate.

The facts are stated in the opinion of the tribunal.

Prospero Sanidad, Mariano Ezpeleta, Camilo Formoso
and *Tranquilino F. Cachero* for the protestants.

Jose O. Vera, Jose W. Diokno and *Antonio Barredo* for
the protestees.

FRANCISCO, M:

On April 23, 1946, a general election was held for President and Vice President of the Philippines, and Senators and Members of the House of Representatives, as provided for in Commonwealth Act No. 725, in relation with Commonwealth Act No. 357. Two major political parties, namely, the Nacionalista Conservative Wing and the Nacionalista Liberal Wing, presented to the people their respective set of candidates. The first was headed by then President Osmeña, while the second was headed by the now President of the Philippines. According to section 11 of Commonwealth Act No. 725, the Commission on Elections was to canvass the results of the election for Senators not later than May 20, 1946, and was to proclaim the sixteen registered candidates for said office who obtained the largest number of votes, in accordance therewith. Pursuant to this provision, the following sixteen candidates, in the order of the number of votes respectively received by each, were proclaimed (Exh. Y) as Senators-elect by the Commission on Elections:

	Votes
1. Vicente J. Francisco	735,671
2. Vicente Sotto	717,225
3. Jose Avelino	708,420
4. Melecio Arranz	666,700
5. Ramon Torres	640,477
6. Tomas Confesor	627,354
7. Mariano Cuenco	623,650
8. Carlos P. Garcia	617,542
9. Olegario Clarin	611,227
10. Alejo Mabanag	608,902
11. Enrique B. Magalona	591,796
12. Tomas Cabili	589,762
13. Jose O. Vera	588,993
14. Ramon Diokno	583,598
15. Jose E. Romero	563,816
16. Salipada Pendatun	557,156

Three candidates for Senator of the Liberal Wing obtained the seventeenth, eighteenth and nineteenth places, as follows:

17. Prospero Sanidad	556,782
18. Vicente de la Cruz	544,621
19. Serviliano de la Cruz	538,995

On May 25, 1946, seven candidates of the Liberal Wing for Senator, including the three above named, filed a protest against seven candidates of the Conservative Wing who had been proclaimed elected. But on July 10, 1946, an amended protest was filed wherein Prospero Sanidad, Vicente de la Cruz and Serviliano de la Cruz appeared as the only protestants, and Jose O. Vera, Ramon Diokno and Jose Romero appeared as the only protestees, these three having, as may be noted above, obtained the thirteenth, fourteenth and fifteenth places.

In the original protest it was prayed that the results of the election for Senator in the provinces of Nueva Ecija, Tarlac, Pampanga and Bulacan be annulled, and that thereafter, the protestants be declared elected Senators in place of the protestees. The prayer for the general annulment of the results of the election in Tarlac has been abandoned, and protestants now ask that the relief be awarded to them with respect only to the second Representative District of that province. As grounds of protest it is alleged that the results of the election in the aforementioned provinces do not reflect the popular will of the electorate, as the Hukbalahaps, a subversive organization that openly aligned itself with the Conservative Wing in said provinces, intimidated, threatened and terrorized the voters so that they would vote for the Conservative Wing candidates; and that the voters prepared their ballots in the manner dictated by the Huks, for fear of death, kidnapping or maltreatment. It is to be noted that the annulment of the results of the election in the four provinces mentioned would automatically place the protestants among the sixteen senatorial candidates getting the highest number of votes, and therefore, would entitle them to be proclaimed elected.

In their answer, the protestees denied the acts of terrorism alleged by the protestants, and prayed that the protest be dismissed.

Both parties adduced voluminous evidence, testimonial as well as documentary. The first hearing before this Tribunal took place on August 29, 1946; and the reception of the evidence continued with intervals until December 28, 1946, when the reception of evidence was finished. The parties having been heard both upon their written memoranda and on oral argument, the case was submitted for decision, which we now render.

In the analysis of the evidence and in formulating our conclusions on each branch of the case, we deem it more convenient to consider the proofs affecting the election in the Province of Pampanga separately from those bearing on the election in the provinces of Nueva Ecija, Tarlac and Bulacan. There are, however, various considerations that apply to them alike. It is an established fact that for the

purposes of the election that was held on April 23, 1946, a coalition was entered into between the Conservative Wing and the Democratic Alliance with which the Hukbalahap organization was aligned. It is likewise an established fact that the Democratic Alliance as a political party, did not present any separate set of candidates for Senator, its candidates for said office having been included in the Conservative Wing ticket. Finally, it is a fact not questioned that the Democratic Alliance and its affiliate, the Hukbalahap, actively waged a campaign for the triumph of the Conservative Wing candidates.

BULACAN

We have examined with painstaking care the documentary and testimonial evidence adduced by both parties with respect to this province. We find as proven specific acts of terrorism in particular municipalities and precincts. But we are unable to reach the conclusion that they are of such character as to instill in the mind of a big body of voters a genuine fear sufficient to restrain the free expression of their will, or otherwise impair their choice of the candidates whom they would want to elect. The protestants submitted in evidence Exhibits H, I, J, K, L, M, M-1, N, O, P and Q, and the testimonies of ten witnesses, to prove their allegations of fraud and terrorism. But the very exhibits above referred to show that in a general way the registration of voters and the election were conducted in a peaceful manner.

Of the ten witnesses, three testified on the election in Baliuag; one on the election in Malolos; one on the election in Paombong; three on the election in San Miguel; and the two, Major Chavez and Lt. Ergino of the MPC, testified with respect to the prevalence of the Huks and the killing of a fellow officer, respectively. We do not find it necessary to discuss at length their testimonies, because there is in the record an outstanding fact which greatly militates against a finding of the employment by the Huks of illegal means to such a degree as to invalidate the election. The present President of the Philippines obtained 39,799 votes as against 38,549 votes obtained by President Osmeña, or a difference of 1,250 votes. The former in sixteen municipalities won while the latter won only in seven municipalities of the province. With respect to the senatorial candidates it is worthy of note that the writer of this opinion obtained the highest number of votes, notwithstanding the fact that V. Lava, one of the Conservative Wing candidates for Senator, hails from this province and was reputed to be the legal adviser of the Huk organization.

In view of these election results, we find it impossible to conclude that the electorate of the province had been victims of acts of terrorism, or that the election results had been influenced to any appreciable degree by said acts. We, therefore, declare that the allegations of the protest have not been satisfactorily proven, and the results of the election in Bulacan, in so far as concern the offices involved in this protest, shall stand.

TARLAC

In support of their allegations of fraud and intimidation in this province, the protestants called to the witness stand Major Camua, Provincial Provost Marshal, Mayor Agustin R. Baltazar of Victoria, and Abelardo Reyes, and submitted Exhibits A-4, A-9, S, T, U-1, and Appendix 3 to Exhibit X.

Exhibit A-9 is a communication of the Provincial Provost Marshal of Tarlac, dated February 16, 1946, to the Commission on Elections, recommending that all precincts in all the barrios of Concepcion, La Paz, Capas, Bamban and Tarlac be transferred to the towns proper, on the ground that, according to reliable information, lawless elements would interfere in the conduct of the then impending election. Exhibit A-4, is a telegram of the same officer, dated April 6, 1946, suggesting the transfer of polling places from the barrios of Concepcion and Tarlac to the *poblacion* for the sake of peace and order. The recommended transfer, however, was not effected by the Commission on Elections (Exhibit X). Exhibit S is a copy of a criminal complaint for serious physical injuries filed against one Felipe Dizon and twenty others in the justice of the peace court of Concepcion for the alleged kidnapping and detention on April 18, 1946, of four members of the "Iglesia Ni Cristo." Exhibits U-1 ad V are copies of the affidavits supporting the complaint. In passing, we may say that these exhibits merely show the fact of the filing of the complaint, but do not prove the truth of the allegations thereof. Exhibit T is a sworn statement of the alleged president of the PKM in one of the barrios of Concepcion. But since the author thereof was not called to the witness stand, the same is clearly incompetent evidence. Appendix 3 is a copy of a communication of the chairman of the Commission on Elections, to General Oboza, Provost Marshal General, under date of April 17, 1946, requesting that all measures and precautions be taken to insure an orderly election. The third paragraph of the exhibit makes reference to several municipalities, among which are Concepcion, Tarlac, La Paz, and Capas, where disorders and threats might possibly happen. We find no probative value in this communication.

Major Camua testified about the kidnapping mentioned in Exhibit S. He, however, admitted that after the election, he reported that the voting in the whole province was conducted in an orderly and peaceful manner. Lieutenant Reyes likewise testified on the kidnapping, and appears to have been instrumental in the apprehension of the offenders. He further testified that on election day he found in the school building at the *poblacion* of Concepcion more than 200 refugees from the barrios, who told him that they had left their homes to escape kidnapping; that he had them brought in trucks to their respective precincts in the barrios, escorted by military police, and they were able to vote; that in the afternoon of the same day he accompanied several voters to their precincts in Victoria, where they cast their votes, not being able to do so without escort; and that after the election, there were people in Capas, La Paz, Concepcion, and Victoria who told him that they were not able to vote on election day because of fear. He declared, however, that the election in Tarlac was held in the manner desired and in accordance with law, and concurred in the report submitted by Major Camus.

Mayor Baltazar testified that he was told by certain persons to take away the pictures of President Roxas and Vice President Quirino, and other candidates of the Liberal Party, hanging in his house; and that he was able to make a campaign only in the *poblacion* and three barrios, because of fear from the Huks and the PKM. We notice a significant point in this testimony. He said that in Victoria the PKM had around 7,000 members, and of the 4,000 registered voters, 3,000 were members of the organization. If this were true, as we must accept it to be true, it would appear that there was no necessity for the PKM to employ threats or intimidation to insure the victory of their candidates.

The protestees called to the witness stand several witnesses whose testimonies tend to show that no coercion, threats or intimidation were employed by the Hukbalahap organization during and before the election. Their Exhibit 9 is a copy of report of the Provincial Fiscal to the Commission on Elections, informing it that no case for violation of the election law had been filed by him. The report of Major Camua, dated April 26, 1946, was also submitted as Exhibit 24. It states that election in the whole province was peaceful and orderly. Another document submitted as Exhibit 25 is a telegram of the superintendent of schools to the Commission on Elections, dated April 25, 1946, informing it that there was complete peace and order during the election.

Considering the foregoing documentary and testimonial evidence, we are not prepared to say that in the second

representative district of Tarlac the electorate did not enjoy the freedom of choice before and during the election. Admittedly, there have been proven in the record specific acts of lawlessness and violations of law; but we do not believe they created in the mind of the people such a feeling of apprehension as was sufficient to materially affect the expression of their will on election day. The particular incident testified to by Major Camua and Lieutenant Reyes is not sufficient, to our mind, to justify the disfranchisement of several thousands of voters. For it is evident that the incident was localized in Concepcion, and the fact is that the more than 200 refugees from the barrios were able to exercise their rights of suffrage in their respective precincts.

It is worthwhile to mention in this connection that President Roxas won in nine and lost in eight municipalities of the province, while President Osmeña won in eight and lost in nine municipalities. The overall result of the election would have been different were the protestants' charge true that the electors voted against their will, under the influence of terrorism and fear.

The results of the election in Tarlac, in so far as concern the offices here involved, shall, therefore, stand.

NUEVA ECIJA

The evidence adduced by the protestants to prove their allegations of frauds and terrorism in this province consist of Exhibits A to A-3, A-5 to A-8, A-11, A-12 and A-13, and the testimonies of 12 witnesses.

Exhibits A to A-3 and A-5 to A-8 are official communications and telegrams concerning the forcible taking by armed men of the ballot boxes in two precincts of Bongabong, one precinct of Gapan, four precincts of Guimba, and six precincts of Santa Rosa. The acts referred to in these documents were committed after the voting, and while the ballots were being read. In our opinion, while they constituted grave violation of the Election Law, they do not tend to show that their author intended to prevent a free exercise of the popular will, since voting had already taken place. On the contrary, what seems to be the necessary implication from the acts is that their author, whether acting for or against the interest of the Liberal Wing, believed that voters on the opposite camp had so exercised their right that if the ballots were to be permitted to be counted, the results would be adverse.

There is another important feature in these incidents of robbery of ballot boxes. There is testimony that when the forcible taking of the ballot boxes occurred in Guimba, President Osmeña was leading by a big margin over his opponent. There is also evidence that the same thing was

true with respect to Santa Rosa, Gapan and Bongabong. It is, therefore, incredible that Huks could be the author of the robbery.

Exhibit A-11 proves the resignation of all school teachers as inspectors and poll clerks in all the precincts of Cabanatuan. It is competent evidence of the fact of resignation; but it is not competent evidence of the reasons for such resignation. The teachers concerned should have been called to the witness stand, and the protestee afforded the right to confront and cross-examine them.

Exhibit A-12 consists of petitions for the transfer of all precincts in the barrios of Rizal, Bongabong, San Jose and Aliaga to the towns proper for the better maintenance of peace and order. These documents are not, of course, evidence of the allegations they contain. Exhibit A-13 is a communication from the Provost Marshal General to the Commission on Elections, dated May 29, 1946. Nine paragraphs thereof deal with the election in Nueva Ecija, five of them having referred to the robbery of ballot boxes already referred to. The statements contained in the remaining four paragraphs are inadmissible as evidence, they being hearsay.

There is testimonial evidence proving specific acts of lawlessness in the municipalities of Cabiao, San Antonio, San Jose, Gapan and Guimba. In Cabiao, for example, it has been testified to that in certain precincts voting was conducted with open ballots, and that Huk leaders were entering the precincts with arms; that Juan Feleo, who headed the PKM, instructed all the members of the organization to vote for President Osmeña, otherwise they would be liquidated; and that in certain precincts electors voted by groups of 5, each group being led by one who had to see the ballots of the rest. While the aforementioned acts constitute a grave violation of the right of suffrage, they would not justify the annulment of the results of the election in the whole municipality of Cabiao, much less of that in the entire Province of Nueva Ecija. For they are confined to specific precincts and do not appear to be widespread in their effects. This conclusion is equally applicable to the other municipalities and precincts, in connection with which the protestants have adduced specific acts of lawlessness and terrorism.

With respect to San Jose, there is a circumstance which completely refutes the protestants' charge. It appears that in that municipality, President Roxas won over President Osmeña by over 800 votes. And the protestants herein obtained more votes than the protestees. Moreover, the overall results of the election in Nueva Ecija show that President Roxas won in 14 and lost in 13 municipalities,

while President Osmeña won only in 13 and lost in 14 municipalities. Repeating what we have already stated with respect to the Province of Tarlac, the results of the election in Nueva Ecija would have been otherwise were protestants' allegation true that the electors in that province voted against their will, under the influence of terrorism and fear.

The testimony of Major Maximo Nocete, Provincial Provost Marshal, does not establish the commission of acts of terrorism by the Huks before and during the election. In his report to the Provost Marshall General, dated April 29, 1946, he stated that the election in Nueva Ecija was peaceful and orderly except in a few isolated cases (Exh. 13). Undoubtedly, the few isolated cases he mentioned refer to forcible taking of ballot boxes in Bongabong, Gapan, Guimba, and Santa Rosa.

From the foregoing, it is our opinion that the results of the election in Nueva Ecija, in so far as concern the offices here involved, must stand.

It is not amiss to state that in not ordering the annulment of the elections in the Provinces of Bulacan, Tarlac, and Nueva Ecija, we took into consideration the salutary rule of law that an election is not to be held invalid except as a last resort, or as stated in *Batturs vs. McGary* (1 Brewster, 162) that "the courts have the power to reject the entire poll, but only in extremest case." In this jurisdiction the same principle has been applied. In *Demetrio vs. Lopez* (50 Phil., 45 (60) it was held:

"The power to throw out an entire division is one which ought to be exercised with the greatest care and only under circumstances which demonstrate *beyond all reasonable doubt* either that the disregard of the law has been so fundamental or so persistent and continuous that it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatever, or that the great body of the voters have been prevented by violence, intimidation, and threats from exercising their franchise."

In *Garchitorena vs. Crescini* (39 Phil., 258) it was again held:

"Courts, of course, should be slow in nullifying and setting aside the election in particular municipalities or precincts. They should not nullify the vote until it is shown that the irregularities and frauds are so numerous as to show an unmistakable intention or design to defraud, and which do, in fact, defeat the true expression of the opinion and wishes of the voters of said municipality or precinct."

Before transporting our attention to the discussion of the issue involved in connection with the election in Pampanga, we deem it proper to make some remarks concerning the report of the Commission on Elections submitted in

evidence by the protestants as their Exhibit X. The pertinent portion of the report reads as follows:

"Except for the *alleged* suppression of the popular will in the Provinces of Pampanga, Tarlac, Bulacan and certain municipalities of Nueva Ecija, wherein the voters were *allegedly* intimidated and coerced by the Hukbalahaps and other lawless elements to such an extent that the election in said provinces is considered a farce, not being the free expression of the popular will, the elections throughout the country were carried on peacefully, honestly and in an orderly manner." (Italics ours.)

Great reliance is placed by the protestants on this portion of the report, because it speaks of the alleged suppression of the popular will not only in Pampanga but also in Tarlac, Bulacan, and Nueva Ecija. They insist that said report being an official record and submitted by the Commission on Elections to the President and the Congress of the Philippines, pursuant to the provision of the Constitution, should be admitted as evidence of the facts therein contained. Undoubtedly, they premise their argument on rule 123, section 35 of the Rules of Court, which provides that "entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty especially enjoined by law, are *prima facie* evidence of the facts therein stated."

It is important to bear in mind that this rule does not guaranty absolute verity to the contents of official records. It is a recognized requirement for its application that "the declarant or person making the entries must have sufficient knowledge of the facts by him entered." (Wigmore's Pocket Code of Evidence, sec. 1097, p. 253.) When the truth of official entries is denied and is precisely in issue, they can have probative value only to the extent that the declarant or person making the entries had talked on his personal knowledge, and not upon information received from others. In the latter case, and in cases where the entries merely represent the opinion or conclusion of the declarant, no probative value can attach.

"... The Government relies in large measure upon various statements and tabulations contained in the report of the Federal Trade Commission, which was introduced in evidence over the objection of the International Company. But it is entirely plain that to treat the statements in this report—based upon ex parte investigation and formulated in the manner herein above set forth—as constituting in themselves *substantive evidence upon the questions of fact here involved*, violates the fundamental rule of evidence entitling the parties to a trial of issues of fact, not upon hearsay but upon the *testimony of persons having first hand knowledge of the fact who are produced as witnesses and are subject to the test of cross-examination*." (U. S. v. International Harvester Co., 274 U. S. 693.)

We quote from Jones on Evidence, Vol. II, page 983, (4th ed.):

"The mere fact that reports are required to be made by statute or public regulation does not render them admissible where they are otherwise incompetent—as where they are hearsay and not part of the res gestae of the transaction in suit."

Conformably with the foregoing doctrine, the Court of Appeals held:

"The report of an official in the fulfillment of his public duties, if objected to, is no evidence that the statements made in it are correct. If the report by itself were to be admitted as evidence of the correctness of its contents, because it was made in the fulfillment of official duty, the opposing party would be deprived of the right to defend itself by cross-examination of the official who made the report, and courts would become mere ministerial officers to carry out the findings of inferior administrative officers." (Gov't. of P. I. vs. Madrona, (C.A.) 37 O. G. 1058.)

It is quite clear from the portion of the report of the Commission on Elections, we have quoted above, that the statement regarding suppression of the popular will in the four provinces mentioned and the intimidation and coercion practised by the Hukbalahaps and other lawless elements, was made by the Commission not upon its personal knowledge or that of its deputies, but upon mere information, as shown by the use of the words "alleged" and "allegedly."

In view thereof, we find ourselves unable to give any probative value to the aforesaid report of the Commission on Elections.

PAMPANGA

The Hukbalahap organization is an upshot of the Japanese occupation, formed ostensibly as an army against Japan. It is a well organized movement, with political, economic and military aims. From its creation up to the present time its Supreme Commander is Luis Taruc, a native of Candaba, Pampanga, and his Vice was Casto Alejandrino, a native of Arayat, same province. It is now a matter of public knowledge that Taruc, though proclaimed elected Congressman for the Second District of Pampanga, has abandoned his office and went into hiding, challenging the forces of the Government. It appears from the testimony of Major Tiburcio Ballesteros, Provincial Provost Marshal of Pampanga, that before the election, men of Taruc's organization had been roaming around the municipalities of Pampanga with arms; and that there was widespread report that whoever would vote for President Roxas would be liquidated. In several municipalities of Pampanga, particularly Arayat, Mexico, and Magalang, a religious sect known as "Iglesia ni Kristo" had decided to support the Liberal Wing. When its affiliation became known, the members thereof began to be threatened by the

Huks, and in fact some of them were kidnapped and killed (Tr. 134, 661-661). The persecution became so intense in the municipality of Arayat that the members of the sect living in its barrios had to seek shelter in the town proper, where the Military Police had to send patrols (Tr. 667-679). The situation with respect to peace and order in Pampanga was so bad in the months immediately preceding the election, that the Military Police Command had to increase its strength from two to nine companies of 144 enlisted men and 5 officers each (Tr. 683). As against these forces of the law there were then reported in Pampanga about 45 Huk squadrons, each being composed of from 120 to 150 men, who were as well armed as the Military Police and who were trained in the art of fighting (Tr. 683-684). With this number of opposing forces, the Military Police Command found it impossible to station a fixed number of men in all the municipalities and election precincts of Pampanga during the days of registration and election (Tr. 684). The Provost Marshal explained that if he had distributed his men in that manner he would have exposed them to attack, and they would have been vulnerable in view of their limited number (Tr. 685). The absence of these agents of the law in the vicinity of the election precincts during the days of registration and election, explains why no incident of major character between the Huks and the Military Police had been registered.

The Municipal Mayor of Arayat, Pedro G. Tan, testified that before the election and in the course of their campaign for the Conservative Wing candidates, the Huks threatened the people to vote for Osmeña, or they would be killed; that while he was supporting the Liberal Wing he could not campaign in far places because he had been threatened many times; that in the town proper alone, 36 persons were killed by the Huks; and that he was one of those kidnapped, although his life was spared due to his friendship with the squadron commander (Tr. 201-207). He also testified that he received instruction from the Huks, ordering him to vote for all the Conservative Wing candidates; that some Huks themselves were kidnapped and killed after the election, because they voted for the Liberal Wing candidates, having become members of the "Iglesia ni Kristo."

Feliciano Calanoc, a native of Arayat, testified that he was the head of the PKM in his barrio; and that he had been told by its organizer that those who would not vote for Osmeña should not repent thereafter (Tr. 408-409). He further testified that after the election, a PKM leader, named Juan Feleo, demanded from him six men in exchange for the 8 votes that were counted for President

Roxas, and that upon his protestation of ignorance as to the persons who so voted, he was taken to a place called Tibak, although he was later on released (Tr. 411-412).

Canuto Salak, a native of Arayat, testified that he was a member of the PKM and that before the election the members thereof told the people that anyone not voting for Osmeña would have cold feet, meaning that they would be killed (Tr. 417). He further testified that a PKM leader told him to vote for all the Conservative Wing candidates for Senator; that as a compromise, he voted for President Osmeña alone, leaving blank the spaces for Senators; and that he was told that if he would vote for the Liberal Wing senatorial candidates he would have "cold feet" (Tr. 419-420).

Claro Amporias, a native of Arayat, testified that he was the president of the PKM in his barrio; that before the election two leaders of the PKM were telling the people to vote for President Osmeña, or else they would be taken care of; and that he voted for all the Conservative Wing candidates, because it was impossible not to do so under the circumstances (Tr. 445-447).

Hermenegildo de Leon, a native of Arayat, testified that in the scheme of organization, the PKM was the government and the Huk was the army; that he was secretary of the PKM of his barrio in April, 1946; that he was told that any member who would not vote for Osmeña would suffer the consequences (Tr. 401); and that when he voted for President Osmeña he was required by the inspector to show his ballot (Tr. 402).

Antonio de Leon, a native of San Fernando, testified that on election day he saw four armed Huks around the precinct where he voted, and that they were requiring the voters to vote for Osmeña and other candidates of his ticket (Tr. 496-397).

Anicia Bautista, a school teacher of San Fernando, testified that she was a poll clerk in Precinct No. 34 of that municipality; that during the registration days armed Huk leaders were present in the precinct; that many of those who registered appeared to be under age, but she was afraid to ask their ages, because the Huks told the voters to register; that during election day there were several Huk leaders at the precinct, who said that if any one voted for President Roxas and he was known he would be "liquidated"; and that some of the voters prepared their ballots in the public view (Tr. 260-265). She further testified that whenever the Huks entered the precinct they behaved as if they were the law (Tr. 273); and that the chairman of the board, in making the report, asked the members thereof to overlook everything, because he was afraid (Tr. 278).

Damaso Bagang, a native of Lubao, testified that on election day three armed men told him and the other people in the precinct that if they would not vote for Osmeña they would suffer the consequences; that after voting he went to a nearby barrio where he saw and heard Huk leaders telling the people to vote for President Osmeña, or also they would be killed (Tr. 373).

Anastacio Evangelino, a native of Macabebe, testified that on April 3, 1946, he was invited at the point of pistols by eight men to a meeting of Luis Taruc; that in said meeting he heard Taruc say that those who would not vote for him and the Conservative Wing candidates would be killed; that the next day he went to San Fernando and there he heard the people saying that those who would not vote for President Osmeña and his party would be killed (Tr. 331-340).

Melchor Flores testified that he was in Macabebe and Masantol in April, 1946, where he attended meetings conducted by the Huks; and that the speakers in the meetings said that if the people would not vote in favor of Osmeña they would die (Tr. 128-130).

Godofredo R. Rivera, a native of Mexico, testified that while he was voting in a precinct in Mexico he heard four or five armed persons ordering all the people around to vote for the Conservative Wing candidates, and that those found out not so voting would be "liquidated." He further testified that after having voted, he went to San Fernando and there saw several men with firearms ordering people to vote for President Osmeña and his candidates (Tr. 289-290).

Martin Songco testified that upon arriving at his precinct in Mexico, he intended to vote for the Liberal Wing candidates, but one DI of the Huks approached him and took his Liberal Wing sample ballot and gave him the Conservative Wing sample ballot instead, and he was told to vote for the candidates appearing in the latter (Tr. 360-362).

Elpidio Guevara testified that he voted in Masantol, although he was only 19 years old, because a Huk squadron leader forced him to do so; that in a political meeting, a squadron member named Vicente Viray threatened the audience that if they would not vote for President Osmeña, Rodriguez and Yuson they would be killed. He further testified that when he voted his ballot was first examined by the Huks before he could deposit it in the ballot box; that he intended to vote for President Roxas but was forced to vote for President Osmeña, Rodriguez and Yuson; and that when he prepared his ballot he was being watched by the Huks (Tr. 113-120).

The protestees sought to prove that the election in Pampanga was conducted in a peaceful and orderly manner, and that its results reflect the popular will, by the testimony of Gerardo Limlingan, former Governor, Luis Panaguiton, former Provincial Fiscal, and Amado Yuson, Congressman-elect for the First District of that province. In an effort to overcome the force of the testimony of Major Ballessteros, the protestees point to the fact that after the election he reported to the Provost Marshal General that there was peace in Pampanga during the election. It is also argued that the evidence adduced by the protestants refer only to specific acts of terrorism in particular municipalities and precincts of Pampanga, and would not justify a wholesale invalidation of the results of the election in the whole province.

We have given this argument our utmost consideration; but we are convinced from a reading of the whole record and after taking into account facts within our judicial knowledge, that the acts of threats, kidnapping and murder were so widespread in their effects as to reach every village and every home in Pampanga. We are not unmindful of the rule that for threats and intimidation to affect the result of an election or the validity of the votes cast therein, they must be such as to instil in the mind a real fear, sufficient to restrain the free expression of the voters' will. But we are satisfied that this rule finds its precise application in the present case where evidently the election was a farce and a mockery. We take judicial notice of the fact that the Hukbalahap organization is subversive in character and would achieve its aims by any means, fair or foul. While Huk activities in open defiance of the forces of law and order after the election of April 23, 1946, of which we take judicial cognizance, may not be conclusive evidence that the members and leaders of that organization so conducted themselves in the same manner before and during the election, we are inescapably led to that conclusion by the very results of the election in Pampanga.

It appears that President Osmeña obtained in Pampanga a total number of 69,505 votes, as against 11,296 votes obtained by President Roxas; that the latter lost in each and every municipality in the province; that in Candaba President Roxas got 164 votes, while President Osmeña got 5,669 votes; in Arayat, President Roxas got 315 against 4,972 for President Osmeña; in Mabalacat, President Roxas got 340, while President Osmeña got 3,009; in Magalang, President Roxas got 230, while President Osmeña got 3,284; in Mexico, President Roxas got 185 against 7,076 for President Osmeña; in San Fernando, President

Roxas obtained 127 against 6,389 votes for President Osmeña. It also appears that President Roxas did not get a single vote in 3 precincts in Angeles; 4 precincts in Arayat; 2 precincts in Bacolor; 14 precincts in Candaba; 4 precincts in Floridablanca; 10 precincts in Lubao; 2 precincts in Mabalacat; 3 precincts in Magalang; 17 precincts in Mexico; 2 precincts in Porac; 7 precincts in San Fernando; 5 precincts in San Luis; 1 precinct in San Simon, and 3 precincts in Santa Ana. On the other hand, an examination of the results of the election for Senator reveals that the *highest* number of votes credited to a Liberal Wing senatorial candidate is 9,705, in contrast to the *lowest* number of votes credited to a Conservative Wing candidate, which is 31,395. It is absolutely incredible that the Liberal Wing candidate for President could have failed to obtain not a single vote in 78 precincts, if the election had been in a free and orderly manner. An it is equally beyond comprehension that the Liberal Wing candidates for Senator could have been left miserably behind by their opponents in the Conservative Wing, had not a campaign of threats, kidnapping and murder been waged for the latter's victory.

Emphasis is laid by the protestees on the fact that the official report of the Provincial Provost Marshal attests to the orderly and peaceful manner in which the election was conducted. We accept that statement as true on the surface, for as has been noted, no incidents of major character took place on the date of the election. But that situation was brought about by the fact that the Military Police, weak as it was in number, would not dare stay on guard in the places where such incidents could easily arise. If the forces of law were kept stationed at the election precincts during the days of registration and election, the flagrant violations of the law disclosed by the record to have been committed, would have undoubtedly caused serious encounters which might have prevented the holding of the election. Furthermore, the great majority of the people of Pampanga had been already suffering from fear long before the election. When they went to the polls on April 23, 1946, their mind had already been prepared to face the inevitable—vote for those they had been ordered to vote, or suffer fatal consequences to themselves and their families. They entered the election booths to prepare their ballots as if they were entering the temple of God, in blind submission to the will of those who had them under control. This explains in a large measure the apparent orderliness and tranquility that reigned in Pampanga during the day of election. It must of course, be admitted, that there were voters who went to the polls and voted, without being influenced by any fear of coercion. And they were the Huks themselves. But in the entire

Province of Pampanga, there were not more than 5,000 real Huks, according to Major Ballesteros.

Under the situation disclosed in the record, it is impossible to separate the legal from the illegal votes. The only alternative left to us is to declare invalid the results of the election.

We are not unmindful of the far-reaching consequences of our decision. We do not overlook the fact that by our action we would in effect be disfranchising innocent electors of the whole province for acts done by others. But the law charts it as our only course of action, under the circumstances obtained in this case. It is a well established rule that whenever the great body of the voters have been prevented by intimidation and threats from freely exercising their franchise the entire vote should be rejected. (20 C. J., 179-181; Demetrio *vs.* Lopez, 50 Phil., 45.) This rule has been restated in Gardiner *vs.* Romulo (26 Phil., 521) as follows: "When the fraud or intimidation is flagrant and its influence diffusive so that it becomes impossible to separate the good votes from the bad and determine the true result of all the good ballots cast, the returns should be avoided." In Jones *vs.* Gilde-well (53 Ark., 161; 7 L. R. A., 831) it was held that "it is not necessary to show that a majority were actually prevented from voting, or voted against their wishes by reason of intimidation. When the wrong is flagrant and its influence diffusive, it is sufficient that it renders the result doubtful." In State *vs.* Fulton (42 Kan. 164) the court said: "It is just as desirable that votes obtained through coercive method should not be counted, but being incapable of detection it has been necessary to adopt a more heroic treatment. The courts have therefore laid down the rule that when fraudulent votes are so mixed up with honest votes that it cannot be determined how many are honest and how many are fraudulent, the returns shall be destroyed."

Where, as in the present case, a political, economic and military organization dominating a whole province and supporting a political party and the candidates thereof have, privately and in public meetings during the whole period of the election campaign, threatened and intimidated the people not to vote for the candidates of the opposite party but for those supported by said organization otherwise they would be killed; where, in order to instill in the mind of the people that these threats would be carried out, the members of this organization kidnapped and murdered well-known leaders of the opposite party; where, due to fear of being kidnapped, murdered or maltreated the leaders of the opposite party had not been able to campaign openly and publicly for their candidates nor had they been

able to go to the barrios to make even secret campaign; where, because of these threats even the candidates, themselves, of the opposite party had not been able to hold public meetings in any part of the province nor had they been able to go there to campaign for their own candidacies; where, in order to make more effective their terroristic campaign, and taking advantage of the inability of the Military Police to station fixed number of men in all municipalities and election precincts because the whole force consisted of only nine companies of 144 enlisted men and 5 officers each company, said organization formed 45 squadrons of armed members, each squadron consisting of 100 to 150 armed men with fighting experience, who went from one place to another throughout the whole province to spread their threats on registration and election days; where, because of threats, many persons sympathizing with the opposite party had to evacuate from their homes in the barrios to seek refuge in the town proper where the Military Police could render them some degree of protection, while many others want as far as the City of Manila; where, on election day itself armed groups of this organization went from one precinct to another and reiterated their threats to the electors on their way to the polls, while other armed squadrons roamed the whole province; where, after elections, several persons who were discovered to have voted for the candidates of the opposite party were kidnapped and murdered, and their corpses found floating on the river; and where the election returns show that the standard bearer of the opposite party received only 14 per cent, and some candidates for Senators of the same party as low as 4 per cent of the total number of votes cast, while the standard bearer and senatorial candidates of the party supported by this lawless organization polled 86 per cent of the total number of votes cast, it is safe to conclude that the threats and intimidation waged by said lawless organization have prevented the free and untrammeled expression of the popular will in the election in said province, and this tribunal should, with firm determination, declare such elections null and void.

The right of suffrage "is among the most important and sacred of the rights of the people in self-government, and one which must be most vigilantly guarded if a people desire to maintain for themselves and their posterity a republican form of government, in which the individual may, in accordance with law, have a voice in the form of his government. If republics are to survive, and if the people are to continue to exercise the right to govern themselves, and to directly participate in the affairs of their government by selecting their representatives by secret

ballot, then the maxims of such a government must be left to the watchful and reverential guardianship of the people. Eternal vigilance is the price paid by a free people for a continuance of their right to directly participate in the affairs of their government." (*U. S. vs. Iturrius*, 37 Phil., 762.)

The Philippines have just attained their sovereign status. We have ordained in our Constitution that sovereignty resides in the people and that all government authority emanates from them. (Art. II, sec. 1.) The people exercise under that same Constitution their sovereign power by means of suffrage. But their exercise of that power will be a myth if suffrage is not voluntary and free. We must, therefore, zealously guard against all attempts to prostitute it. Otherwise, we would be permitting the evil of force to gnaw into the very structure of our government and ultimately destroy its very foundation. If we are to permit the result of the election in Pampanga to stand, we would be legalizing the effects of evil, and virtually refusing to vindicate the sovereign rights of the people. Our decision would be an encouragement, and it would just be a matter for designating individuals in the future to organize a group of men with such control and influence as may be sufficient to command the inhabitants of a province, to catapult to power their comrades who are not the free choice of the electorate. An action that will encourage such a scheme should never be countenanced. As rightly said: "A public election bears such a vital relationship to a representative form of government that it must be supervised and governed as an institution for the welfare of our citizens. It is sometimes said that it is natural for us to take certain evils for granted and there are those who seem to confidently surmise that corrupt practices have always to some degree invaded public elections. Vested wrongs of this character, if such exist, should never be regarded by any court as vested rights. Assuredly, those who are called upon by statute to help operate the election machinery ought not to conclude that a fair and honest election is an aspiration too lofty to achieve. The Legislature has outlawed almost every conceivable corrupt practice and fraudulent activity in our elections. It is idle, however, to entertain the notion that the forces of law is so great that the mere enactment of a prohibition of such evils will of itself accomplish the desired end. The law, when enacted, will not execute itself. It requires the active interposition of those responsible for its enforcement. To condone violations of such laws will inevitably produce incalculable evils. Conduct will forever follow the prevailing standards. Unfortunately, posterity inherits and oft reproduces vices as well as virtues." (*In re Hunt*, 191 Atlantic Reporter, 437; XII L. J. No. 3, p. 119.)

Unpleasant as our task is, we are constrained to annul, as we hereby annul, the results of the election of April 23, 1946, for Senators, in the Province of Pampanga.

In reaching our conclusion on each and every branch of the case, we have never for a moment permitted ourselves to be swayed by party considerations. In all parliaments of the world, the invariable rule is to leave unto themselves the determination of controversies respecting the election and qualifications of their members. This practice was followed in our country. But when the fundamental law of the Philippines was being drafted, the idea was conceived of transferring that power to a separate and independent body to be created in the Constitution itself, known as the Electoral Tribunal, to be composed of members of both the majority and minority parties, in the legislative body. But fearing that the Tribunal as thus composed might not still guaranty an impartial and just disposition of election contests, it was furthermore conceived that three members of the Supreme Court sit in judgment in the Tribunal. When this last idea was launched on the floor of the Convention, the same received the support of public opinion.¹ The Constitutional Convention approved the proposal, and the corresponding provision was inserted in the Constitution as section 11 of Art. VI thereof, which reads as follows:

"The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election returns, and qualification of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be justices of the Supreme Court to

¹ "The Constitutional Convention was right in following the argument of Delegate Vicente J. Francisco in defense of the inclusion of three justices of the Supreme Court in the electoral commission. We have had enough experience with election protests heard and decided by the legislature, to be able to tell with absolute certainty that such protests should be removed from partisan influences rather than from the counsel of the judicial branch of the government.

"As Delegate Francisco pointed out, the nature of an election protest is judicial.

"If the intention of the authors of the provision creating the electoral commission was to allow the courts to encroach upon a legitimate function of the legislature, they could have at least given the justices of the Supreme Court a preponderance in the commission. This was not done, and there will be, aside from the three justices, three majority and three minority legislators.

"There is no fear as such of the justices dominating the views of the electoral tribunal, but there is certainty that they will, upon an impartial examination of facts, support either of the two political factions that has justice on its side. And more important, there would be no room for partisan decisions under the system of check-balance, the most practical question yet conceived for the administration of justice at the polls." (*Philippines Herald*, December 5, 1934.)

be designated by the Chief Justice, and the remaining six shall be Members of the Senate or of the House of Representatives, as the case may be, who shall be chosen by each House, three upon nomination of the party having the largest number of votes and three of the party having the second largest number of votes therein. The senior Justice in each Electoral Tribunal shall be its Chairman."

The people approved the Constitution when it was submitted for their ratification. It is, therefore, clear that in deciding an election contest—which is in reality a step in a systematic series of operations designed to insure fair and honest elections and to produce true conclusions and results—it is the people's will that this Electoral Tribunal should act in accordance with law and justice and with complete detachment from all political considerations.

In view of the result we have separately reached with respect to the four provinces involved in this protest, we hereby declare that the protestant Prospero Sanidad and protestees Jose O. Vera and Ramon Diokno have been duly elected as Senators in the election of April 23, 1946, they having obtained the 14th, 15th and 16th largest number of votes, as follows:

Prospero Sanidad	552,545
Jose O. Vera	551,516
Ramon Diokno	544,369

Without special pronouncement as to costs.

VICENTE J. FRANCISCO

PARÁS, *J.*, concurring and dissenting:

This protest calls for a declaration as to what norm of conduct should be followed in an election. The Commission, which is charged with the supervision of elections, has reported as required by the Constitution that the result of the election in the provinces of Pampanga, Tarlac, Nueva Ecija and Bulacan, the first held after the inauguration of the Republic of the Philippines, does not express the free will of the electorate on account of terrorism and coercion. Indeed, one of the two members of the Commission giving that information, was for the exclusion of the votes supposed to have been cast in said provinces.

I concur in the findings of fact and conclusion of law of Senator Vicente J. Francisco as regards the election in the Province of Pampanga. I dissent, however, from his opinion concerning the election in the three other provinces. It may be admitted that in Bulacan coercion and terrorism had been less rampant than in Pampanga (the center of said activities, but there is abundant evidence conclusively showing that there had been more of such condemned acts in the Second District of Tarlac, which is the only part of the province involved in the protest, and in the Province of Nueva Ecija.

It was in the municipality of Concepcion, Tarlac, where the members of the Iglesia ni Kristo, well known to be supporters of the Liberal Wing Ticket, had been persecuted and kidnapped. The then Provincial Governor wanted to have all the electoral precincts of Tarlac, Capas and Concepción in the *poblaciones* of said municipalities. The superintendent of schools, Mr. Ramos, even recommended that the election in the municipality of Concepción be suspended. The result of the election in this district is as follows:

	OSMEÑA	ROXAS
Bamban	1,558	273
Capas	1,307	736
Concepción	5,209	851
La Paz	3,012	154
Tarlac	6,336	2,701
Victoria	2,090	1,222
	19,512	5,937

The proportion somewhat approximates that obtained in the Province of Pampanga.

In the Province of Nueva Ecija, the local authorities for a good reason had placed all the precincts in the *poblaciones*; the locations were, however, changed upon representation of some leaders of the Conservative wing of the Nacionalista Party. All the teachers-inspectors resigned in view of the change and, according to Chairman Lopez Vito of the Commission on Elections, they had been substituted. Immediately after the election, corpses of members of the Iglesia ni Kristo were found floating on the river with the marks "Kami bomoto ki Roxas," and in various precincts of the municipalities of Bongabon, Gapan, Guimba, and Santa Rosa, the ballot boxes were stolen and some inspectors kidnapped. Attorney Juan M. Arreglado could not campaign for the Liberal Wing because he had been threatened. A Huk leader known as Vibora who a few days before the election had turned pro-Liberal, had disappeared, with his whereabouts still unknown. Feleo, the recognized head and leader of the PKM, had also disappeared. Mayor Carlos of Jaen, a pro-Liberal leader, was shot while returning home from a political meeting. While the difference of votes cast for the two contending parties was not as big as that in the Second District of Tarlac and in the whole Province of Pampanga, the evidence is clear that the contest in Nueva Ecija had been between two or more armed groups that had frequent clashes. Although there had been resistance to the aggressive and coercive attitude of one group, the other was no less guilty of terrorism.

In the Province of Bulacan a pro-Liberal leader known as Kidlat had disappeared before the election. Another leader of that Party, Mayor Roxas of Bulacan, Bulacan,

was shot immediately after the election. Two brothers, who were leaders of the Democratic Alliance, were shot. Dr. Villarama, invariably a winner in previous elections during which he could freely campaign, was badly defeated in this election evidently because he was not able to go to the barrios of the different municipalities in view of threats against his and his leaders' lives. (See also the testimonies of witnesses Rafael Chico, Francisco Giron, Isberto Crisostomo, Tomás Cabiao, Ubaldo Tecson and Benjamin Cato, all from Bulacan.)

It should be remembered that Huk activities were more effective in those parts of the Provinces of Tarlac, Nueva Ecija, and Bulacan adjoining and near the Province of Pampanga. (Testimony of Gen. Castañeda.)

The testimony of the respective provost marshals, confirmed by the reports submitted before the election, shows the existence of rampant terrorism in the four provinces. It is true that on election day voting seemed to be generally peaceful and orderly, but as observed by Senator Francisco, such terroristic practices had already worked havoc on the people and electorate. The testimony of Commissioner Vera is as follows:

"* * * No ocurrió como ocurrieron en algunos otros municipios, donde inclusive hubo algazaras, algunas discusiones, algunos incidentes leves respecto al ejercicio del sufragio. Allí en las cuatro provincias no ha ocurrido nada, lo cual prueba que todos aquellos que iban a los precintos, tenían que aparentar inclusive ser partidarios de los Hukbalahap que eran los que estaban presionando a la gente, porque si demostraban alguna resistencia, corrían el peligro de ser matados o atropellados, o lo que fuera. Tal vez dirá usted que sería admitir, pero se me figuraba y me afirmó de que las elecciones de las cuatro provincias se han verificado como si se verificaban en viernes santo o en jueves santo, lo que llamamos los católicos 'visita de iglesias.' Los electores iban a los precintos calladitos y hasta devotamente depositaban los votos con el fin de evitar mayores males. Por eso con razón la Comisión decía que estaban bajo el terrorismo, estaban encogidos los pobres electores."

The evidence for the protestants is in a way corroborated by the witnesses for the protestees.

The foregoing conclusions are based on the evidence on record. There is, moreover, authority to the effect that judicial notice may be taken of terrorism in the territory or district involved; and much weight should be given to the report of the Commission on Elections, an institution created by the Constitution.

In justice, however, to the protestees, I should state that while they had been the beneficiaries or perhaps the victims of terrorism and coercion during the campaign, there is not a scintilla of evidence showing that they had in any way participated in or authorized those base methods.

A member of the Tribunal had charged it with having delayed the disposition of this case. True, Mr. Justice Perfecto alone voted on November 7, 1946, to dismiss the protest after the protestants had closed their evidence; and in the same month, he had already stated in his dissenting opinion in the case of *People vs. Jalandoni*, G. R. No. L-777, that:

"* * * the majority of the Senate betrayed the trust of the people by depriving arbitrarily and tyrannically of their seats three senators, duly elected in the last national elections."

In defense of the other members of the Tribunal, I must emphasize that copies of the voluminous documentary and oral evidence were delivered to them only between the 6th and 8th of January, 1947. I undertook, by authority of the Tribunal, to receive the oral evidence, with the result that the other Members did not have the benefit of hearing the witnesses (around 80) testify. The last memorandum in the case was filed on January 30, 1947, the date when the case may undoubtedly be considered submitted. Only a conscientious perusal of the oral and documentary evidence will enable the Members of this Tribunal to emit an impartial opinion; they had simply taken a reasonable time for the purpose.

My vote, therefore, is to sustain the protest, to annul the election in the provinces of Pampanga, Nueva Ecija, Bulacan and the second district of Tarlac, and to declare protestants Prospero Sanidad, Vicente de la Cruz and Servillano de la Cruz duly elected.

Without costs.

RICARDO PARÁS

Concurring:

Salipada K. Pendatun
M. Jesus Cuenco

PERFECTO, J., concurring and dissenting:

On May 25, 1946, the protest initiating this case was sworn. As filed, there were seven protestants and seven protestees. In July an amended protest was filed, dropping the names of protestants Pedro Magsalin, Antonio D. Paguaia, Eduardo Cojuangco, and M. Garchitorena and of protestees Senators Tomas Confesor, Carlos P. Garcia, Alejo Mabanag, and Tomas Cabili. The original protest challenged the result of the elections in six provinces: Bulacan, Nueva Ecija, Pampanga, Tarlac, Lanao and Catanduanes. The amended protest eliminated the last two.

Protestants sought to annul the elections in the above-mentioned Central Luzon provinces, alleging that, due to terroristic practices employed by subversive elements, their results do not represent the free expression of the popular

will of the electorate. As alleged by protestants, on the basis of the canvass made by the Commission on Elections, protestants and protestees obtained the following respective number of votes:

Prospero Sanidad	556,772
Vicente de la Cruz	544,621
Servillano de la Cruz	536,995
Jose O. Vera	588,993
Ramon Diokno	583,598
Jose E. Romero	563,816

DELAY

At the outset, we must admit in all fairness that this Tribunal cannot be proud of the fact that it needed almost eleven months to dispose of this case, which is relatively a simple one, where no abstruse legal questions have been raised and the issues of fact are few.

Delays begun at the acts of complacency shown to protestants in the matter of posting a bond. The taking of evidence consumed almost one-half of 1946 and to put the case to a vote for decision it took almost four months.

The fact that the testimonies of nearly one hundred witnesses are written in 1,565 pages of typewritten transcript of the stenographic notes and about a handful thick of documents were exhibited, is no excuse. All the evidence in this case, oral and documentary, could have been presented in less than a month, and two weeks are more than enough for all the members of this Tribunal to peruse the transcript and the exhibits and to render a conscientious judgment.

Considering the fact that Senators are elected by the whole nation, this Tribunal must face the possibility of taking cognizance of a protest challenging the elections in all of the more than forty provinces of the Republic. The provinces affected by this protest represent only about one-tenth of the country. If we needed almost a year to decide this protest we will have to multiply that period of time by ten to decide the protest involving the elections in the whole Archipelago. That means nearly ten years. The situation appears hopeless if we consider that the position of a senator lasts only six years.

The kinds of evidence presented in this case are of the simplest. The evidence usually presented even in such unimportant electoral contests as the ones affecting municipal or provincial positions has not been presented, such as thousands of ballots, voters' lists, ballot stubs, voters' affidavits, a great number of other electoral documents, handwriting photographs and other paraphernalia of handwriting experts. In this case less than one hundred witnesses testified while in less important protests hundreds or even thousands of witnesses have been summoned to testify.

We discuss this problem with the future in view. The morrow must not catch this Tribunal napping, if it refuses to be relegated to the corner of futility. This Tribunal must have a more dynamic spirit if it is to be equal to the responsibilities awaiting ahead.

ADMINISTRATIVE DEPENDENCE

One of the main causes of the delay in the disposal of this case is the fact that this Tribunal is not provided with the essential things it needs to function efficiently as an independent judicial body, and as contemplated by the authors of the Constitution.

No independent office, personnel, furniture and other essential things are provided for the Tribunal. We do not have stenographers. We had to borrow a pair of them from the Senate. No paper and other writing materials are provided us. The Secretary of this Tribunal is an appointee of the President of the Senate, who is one of the political leaders of some of the litigants appearing before us. There is absolutely no appropriation for messengers, for telegraphic and telephone services; not even for stamps, and in case the Tribunal has to send an official communication, it has to borrow help from the Supreme Court. Not even a place where to file our records is provided.

The material handicaps entailed by the lack of essential elements needed by the Tribunal to properly function is overshadowed by concomitant moral dangers.

For the Senate Electoral Tribunal to efficiently function and to administer true justice, its independence must be preserved at all cost. It should not depend for administrative purposes on any other department or authority. It should be provided with all the essential elements for its complete autonomy. At present, it is in danger of becoming a mere appendage of the Senate. The drafters of the Constitution would not have created it if they had contemplated that such a situation may obtain.

To make the Senate Electoral Tribunal a truly independent body and to enable it to administer justice, without fear or favor, it should be provided with a proper office, with its own personnel, and with all the other essential elements for a government office to function and properly perform its duty.

PROTESTANTS' EVIDENCE

The evidence of the protestants has completely failed to support their allegation that in the national elections held on April 23, 1946, the popular will of the electorate in the four Central Luzon provinces was not allowed free expression.

The printed memorandum of protestants carries a summary of the testimonies of thirty-nine witnesses, the best among the nearly fifty witnesses who testified for protestants. Accepting unconditionally said testimonies as the very embodiment of truth, and without, therefore, considering what the witnesses for the protestees had testified, we cannot, if we have a clear idea of our responsibility, take them as enough basis to pronounce conscientiously null and void the elections in Bulacan, Nueva Ecija, Pampanga and Tarlac. To pronounce that the majority of the more than one hundred thousand voters cast their votes against their free will, because three or four dozens of witnesses had testified to about three or four dozens of individual cases of alleged threats against those who would vote for Manuel Roxas as President, it is necessary to eliminate first reason and common sense as worrying obstructions. Accepting the hypothesis that three or four dozen individuals were intimidated, what authorizes us to jump to the conclusion that more than one-half of the more than one hundred thousand voters of the four Central Luzon provinces voted against their will?

According to the evidence of protestants, all in all, only about a dozen individuals testified that, under fear, they voted against their own will, that is, in favor of Sergio Osmeña for President when they were for Manuel Roxas.

Upon the isolated cases of intimidation testified to by the witnesses for the protestants, there is no ground to brand the majority of the more than one hundred thousand voters of the four provinces in question with the shameful and burning stigma of cowards, because they would not dare to vote according to their own free will.

NOT EVEN ONE PRECINCT

To annul an election it must be shown that it has been vitiated to the extent of defeating the popular will in the territorial unit involved in the protest and, thereby, affecting the result. It is not enough that a single voter or a small number of voters have been deprived of the freedom of choosing their candidates, if their votes, cast either way, would not change the result. Our national experience in nearly one-half of democracy in action has conclusively shown that, unless human nature is changed, it is impossible to absolutely eliminate all irregularities in hotly fought elections. Passion runs high in all electoral struggles and, in the same manner that crimes and felonies will continue to be committed while there is humanity, there will always be political leaders or party followers who, blinded by their group interests, will put aside all scruples to freely violate the law and trample down the political rights and privileges of their opponents.

No one fought more for the cause of clean elections than ourselves. No one worked harder and longer for legislative reforms in order to minimize the possibility of electoral frauds and anomalies. Such reforms are now embodied in the Election Code. No one has been more relentless in exposing and denouncing the political crooks and bandits who, to promote their interests, resorted to deceit, fraud and violence to defeat the popular will. No one has suffered more persecutions for waging that crusade for political cleanliness, for due regard and respect to the popular will, for the sacred cause of democracy. In the same way that no violations of the highest standards of a free and clean election can expect from us the least leniency or complacency, we refuse to surrender to that subversion of ideas, logic, and common sense of allowing the will of the majority of the people to be nullified and defeated just because a few voters, being moral weaklings, lacked the courage of repelling intimidations and, even under the protection of our system of secret voting, pawned their freedom and personal dignity under the shadow of their own fears. Such a political travesty is unbearable.

Upon the very evidence on record, there is not enough factual or legal ground to declare null and void the election in any single electoral precinct of any single municipality of any of the four provinces involved in the protest.

No evidence, absolutely no evidence, has been presented to show that a substantial majority or even one per cent of the voters were denied the right and opportunity to select the candidates of their own free choosing. Although a few witnesses, about twelve of them, testified that, while supporting Roxas, were in fact threatened to vote for Osmeña, the protestants had not dared to offer as evidence the ballots of said witnesses, which is the primary and only competent evidence as to how said witnesses actually had voted. The testimonies of said witnesses, unsupported by their own ballots, are absolutely worthless. Not even the voters' lists have been presented and, therefore, the primary and competent evidence being lacking, we do not even have any legal ground to consider that said witnesses are registered voters. Upon the evidence, they can as well be considered as mere poseurs, if not outright impostors.

During our long years in the practice of law, it has been our lot to handle many cases of election contests affecting positions of municipal president, provincial governor, and members of the Senate and House of Representatives of the pre-Commonwealth legislature. Either in protests actually handled or in records perused in long researches, we have never stumbled upon any case in which the election of one single electoral precinct has been declared null and void only upon the word of one or two witnesses that they were

compelled to vote for a candidate not of their own free choosing. The reason is because no tribunal could have been so irresponsible as to annul the will of the overwhelming majority of the innocent voters of a precinct, their numbers running usually to one or more hundreds, only because the ballots of one or two voters have been tainted with fraud.

There being no evidence upon which we may pronounce the election in one single precinct in the four provinces as null and void, it stands to reason that we are not justified to annul the election in any of said provinces, when to arrive at such a conclusion we have first to declare null and void the election in all their municipalities, and to annul the election in all said municipalities we must first declare null and void the elections of each and every one of the precincts of each and every one of said municipalities.

OSMEÑA VERSUS ROXAS

On reading the evidence in this case we are startled by the fact that, from the point of view of protestants, this is not a senatorial contest, but one affecting the office of the President of the Philippines.

The alleged threats and terroristic practices testified to by the witnesses for the protestants, according to them have been used to diminish the votes for Roxas and increase those for Osmeña. The testimonies of said witnesses tend to show that the supporters of Roxas for President were the ones who were threatened to compel them to vote for Osmeña.

No evidence has been presented that any voter for any of the three protestants has been subjected to any intimidation to desert the protestants and support the candidacy of the protestees. Had protestants succeeded in convincing us that any election should be declared null and void, that election cannot be other than the presidential, but never the senatorial.

Upon the evidence of protestants it is hard to understand how their claim for the annulment of the senatorial elections of the four provinces involved in this contest can prosper.

The pretense can have its way only upon the acceptance of the absurd theory that all Roxas voters for President were also unconditionally voters for each and every one of the three protestants; that all Osmeña voters for President are also voters of protestees for Senator, and that all votes cast in favor of Osmeña must also be considered as cast for each and every one of the protestees.

Only self-delusion, such as the Japanese and the Nazis were practicing upon themselves, may drive us into accepting such a theory. Unreasonable is the least epithet it deserves.

Failing to offer any competent evidence of alleged wholesale intimidation upon which protestants relied their cause, they depended on the batch of documents they presented as evidence. They consist of written reports which, tested upon the standards of elementary rules of evidence, are completely worthless. For the purpose of deciding this protest upon law and fact, they have no more value than the bunch of paper on which they are written. They are merely second, third, or fourth grade hearsay. They are hearsay evidence based on hearsay reports made from hearsay information. No one answers for the truth of the facts relayed through so many hands. If the facts should happen to be false, no one can be pointed out, much less prosecuted, as the author of the falsification. With very few exceptions hearsay evidence is inadmissible. The reports in question do not come within any of the exceptions recognized by law.

The most significant of said reports is the one coming from the Commission on Elections. On the strength of that report protestants would want us to pronounce null and void the elections in the four provinces in question. We have never seen an official report so unworthy, so unreliable, and even so undignified as that report, marked as Exhibit X. Although supposed to be issued by a collective body, the Commission on Elections, it is but a one-man document, written in a language which is not the written means of expression of its signer. That may explain the glaring contradictions of the statements embodied in it. While it makes general mention of voters allegedly intimidated or coerced by the *Hukbalahaps* and other lawless elements, it also says that the election on April 23, 1946, "has been conducted in a peaceful, honest, and orderly manner as required by the Constitution and the laws" and as a result of which "the respective representatives elected for all the provinces throughout the country have been duly proclaimed elected by the various boards of provincial canvassers, and the Commission on Elections on May 23, 1946, also proclaimed those elected Senators in accordance with section 11 of Commonwealth Act No. 725." Two members of the Commission on Elections, constituting the majority, refused to sign this one-man document and each wrote his own statement. This one-man document has absolutely no evidentiary value for the purposes of this protest. Such an effeminate and spineless document is not even worthy to be issued by a government office or official with full consciousness of his responsibilities. Its reading creates the impression that, rather than give an objective account of facts, it has been written to please two opposing masters. The

administration of justice cannot stand on so precarious a ground.

PAMPANGA

Although justice has been duly served when a majority of this Tribunal refused to declare null and void the elections in Bulacan, Nueva Ecija, and Tarlac, we regret that a different majority has taken contrary view with regard to the election in Pampanga.

It is highly significant in this connection that Senator Vicente J. Francisco, notwithstanding the fact that by declaring null and void the elections in Bulacan, Nueva Ecija and Tarlac, he would serve the interests of protestants who belong to his own political party in which he is one of the most prominent leaders, being the majority Floor Leader in the Senate, he could not reconcile himself with his conscience to do so and would rather sacrifice his party's interests to the highest interests of truth and justice, by upholding the validity of the elections in said three provinces.

The main ground for declaring null and void the election in Pampanga is the fact that, while President Roxas won in the majority of each of the three other provinces, he has been defeated in each and every one of the municipalities of Pampanga. The deciding vote to annul the election in said province has been cast upon the theory that the defeat of President Roxas is an evidence that the popular will of the province has been swayed by terrorism practiced by the *Hukbalahaps*.

This view is not founded on reason. It ignores the laws governing cause and effect. It starts from a wrong premise and the conclusion is necessarily wrong. For a conclusion to be correct, under the rules of logic, all the premises must first be correct. The view assumes precisely the controverted issue which must be proved. *Petitio principii* is the name of that dialectical error. The question is whether the *Hukbalahaps* coerced the voters of Pampanga. The view assumes as a premise the proposition that coercion by the *Hukbalahaps* was necessary to defeat President Roxas. Preident Roxas was defeated. Therefore, the voters acted under the coercion of the *Hukbalahaps*. The major premise of the syllogism, which usually should be an undisputable proposition, appears to be false, no evidence having been presented to support it. By such kind of syllogism we will be making unending rounds in a vicious circle.

To show that the major premise in question is false it is enough to mention the fact that the syllogism has not been applied with respect to the elections in the municipalities of Bulacan, Nueva Ecija and Tarlac where President Roxas has been defeated by President Osmeña.

The view is based also on the error of considering provinces as electoral units instead of precincts. These are the natural units to be considered under the law. To consider a province, a municipality, or a district composed of several municipalities, as electoral units for purposes of determining the results of the elections is arbitrary. The units considered by the law for canvassing purposes are the election returns of each precinct. If the arbitrary unit of a province must be accepted there is no reason why the whole island of Luzon cannot also be considered as a unit, and there is no question that in the combined results of the elections in all the provinces of Luzon, President Roxas won by an overwhelming majority over President Osmeña. Under the logic of this view in question, there is no reason for declaring null and void the election in any part of Luzon.

Furthermore, the view in question echoes the wrong theory of judging this Central Luzon election contest by judging the presidential election. Such a confusion cannot stand the least analysis.

CONCLUSION

For all the foregoing, we vote to dismiss the amended protest and to declare that protestees Jose O. Vera, Ramon Diokno, and José E. Romero have been duly elected as Senators in the national elections of April 23, 1946. We dissent from the action of the majority declaring protestant Prospero Sanidad as elected in lieu of Senator Jose E. Romero. Upon the facts and the law, such action is unjust not only to said protestee but to the more than half a million voters who supported him and to the people of Pampanga who will always carry the unmerited shame of the annulment of their election. There is also a glaring inconsistency in such action of this Tribunal, whose decision may be described as 2/3 justice and 1/3 injustice. The 2/3 justice cannot atone for the 1/3 injustice which, in the final analysis, will overshadow the former. Clean water cannot be taken from a bowl where 2/3 clean water and 1/3 dirty water have been poured and mixed.

GREGORIO PERFECTO

HILADO, J., concurring and dissenting:

I concur in the concurring and dissenting opinion of Mr. Justice Parás. In addition to the grounds stated in support of the conclusions therein reached, it might not be amiss to set forth the following considerations:

In my opinion, under the evidence of record it is absolutely impossible to segregate the legal from the illegal votes in the provinces or parts thereof to which the protest refers. And not only this, but it is likewise impossible to ascertain in whose favor the majority of the legal votes were given.

In the case of *Gardiner vs. Romulo*, 26 Phil., 521, 564-565, the following quotations have been approvingly made from several American decisions:

"It is not necessary to show that a majority were actually prevented from voting, or voted against their wishes by reason of the practice (intimidation). When the wrong is flagrant and its influence difusive, it is sufficient that it renders the result doubtful." (*Jones vs. Glidewell*, 53 Ark., 161; 7 L. R. A., 881.)

"In *Martin vs. McGarr* (27 Okla. 653), it was said: 'While a contestant in an election may always object to the counting and consideration of fraudulent or illegal votes, yet the reception of the same will in no instance result in the avoidance of the election except where the entire poll is so tainted that the good votes cannot be separated from the bad, and it is impossible to ascertain for whom the majority of the valid ballots were cast. The general rule obtaining throughout all the States of the Union is that an election is not to be held invalid except as a last resort, the correct doctrine being announced by Judge Brewster, in the case of *Batturs vs. McGary* (1 Brewster, 162), as follows: 'The courts have the power to reject the entire poll, but only in the extremest case—as where it is impossible to ascertain the true vote. Impossibility is the test.''"

"In *Hardy vs. Beaver City* (125 Pac., 679), it was said: 'Where an election takes place which is held or conducted in violation of some express constitutional or statutory provision, or where through some act of commission or omission prohibited by law on the part of the voters or some of them, the result of an election is affected, or if it be shown that fraud, intimidation or other illegal methods were practiced, then an election cannot stand.'"

In the case of *Reyes vs. Biteng*, 57 Phil. 100, the same principle was reiterated in the following words:

"It being impossible to segregate the legal from the illegal votes because of frauds and irregularities affecting the entire election to such an extent as to be impossible to ascertain the true will of the voters authorized to exercise the right of suffrage, the entire election held in the joint precinct of Concepcion and Sigay is null and void."

EMILIO Y. HILADO

BUENDIA, M., concurrente y disidente:

Concurrimos con la mayoría en cuanto desestima la protesta respecto de la elección de los Senadores electos José O. Vera y Ramón Diokno, y disentimos en cuanto sostiene la protesta contra la elección de José E. Romero y declara Senador electo al protestante Próspero Sanidad.

Por primera vez en la historia política de Filipinas se ha levantado protesta formal contra la elección de un funcionario nacional elegido por todo el país. La causa es de suma transcendencia; de su resolución justa y correcta depende, no sólo la fortuna política de las partes en esta causa, sino también la historia futura de nuestro país. Conscientes de la gravísima importancia del deber que pesa sobre nosotros, nos hemos despojado, los miembros de este Tribunal, de toda filiación y simpatía política, y

hemos afrontado la tarea árdua de resolver esta causa con mente imparcial y guiándonos sólo por la ley y la justicia.

Se puede decir que los antecedentes inmediatos de esta protesta son de conocimiento público.

El 23 de abril último, después de gemir por tres largos años bajo el yugo opresor del invasor japonés, el pueblo filipino, libre otra vez, celebró sus primeras elecciones nacionales de acuerdo con la Ley No. 725, aprobada por el Congreso de Filipinas el 5 de enero de 1946. Dos partidos grandes se presentaron ante el pueblo—el Partido Liberal encabezado por el hoy Presidente, Honorable Manuel A. Roxas, y el Partido Nacionalista, encabezado por el que fué Presidente, Honorable Sergio Osmeña. Con este último partido se coaligaron el nuevo partido formado después de la liberación denominado Democratic Alliance, y el antiguo partido opositor Frente Popular (Sumulong).

Las partes de esta protesta eran candidatos oficiales para el cargo de senador, siendo los protestantes—Próspero Sanidad, Vicente de la Cruz, y Servillano de la Cruz—candidatos del Partido Liberal, y los protestados—José O. Vera, Ramón Diokno, y José E. Romero—candidatos del Partido Nacionalista.

La lucha electoral fué reñida, quizás la más reñida en la historia del país, y hasta última hora no se había qué partido había apoyado el pueblo. Sin embargo, la votación se llevó a cabo pacífica y ordenadamente, y salvo unos cuantos incidentes en diferentes partes de Filipinas después de cerrada la votación, el día y la noche de las elecciones pasaron tranquilamente. Tabulados los resultados, se halló que el pueblo había escogido al Partido Liberal, capturando este partido, no solamente la presidencia y la vice-presidencia del país, sino también una mayoría en ambas Cámaras del Congreso de Filipinas. El 23 de mayo de 1946, la Comisión de Elecciones proclamó elegidos a los 16 senadores que habían obtenido el mayor número de votos. Entre estos 16, ocupando los puestos 13, 14° y 15° respectivamente, figuraban los tres protestados (Exhibito Y). Los protestantes ocuparon los puestos 17, 18° y 19° respectivamente (Exhibito Z). Sin embargo, la Comisión Electoral presentó un informe, que llevaba la misma fecha que su proclama, en la que dictaminaba que, en su opinión, las elecciones en las cuatro provincias del centro de Luzón—Bulacán, Pampanga, Nueva Écija y Tárlac—no reflejaban la libre expresión de la voluntad popular en dicha región (Exhibito X).

En vista de este informe, y de la protesta actual, que en el entretanto se había presentado al Secretario del Senado, el 25 de mayo de 1946, la mayoría del Senado de Filipinas, una vez organizada, adoptó una resolución que suspendía

a los protestados de sus cargos hasta la resolución de esta protesta por este Tribunal (Exhibito AA).

Es un hecho no controvertido que el número total de votos que las partes recibieron fué la siguiente:

	Total	Diferencia
José E. Romero	563,816	
Próspero Sanidad	556,772	7,044
	—————	
Ramón Diokno	583,598	
Vicente de la Cruz	544,621	38,977
	—————	
José O. Vera	588,993	
Servillano de la Cruz	536,995	51,998
	—————	

Tampoco se cuestiona seriamente que en las provincias de Bulacán, Pampanga, Nueva Écija, y en el segundo distrito electoral de Tárlac, el protestado José E. Romero obtuvo una mayoría de 45,686 votos sobre el protestante Próspero Sanidad; Ramón Diokno una mayoría de 56,844 votos sobre el protestante Vicente de la Cruz; y el protestado José O. Vera una mayoría de 56,122 votos sobre el protestante Servillano de la Cruz.

Alegan ahora los protestantes que las elecciones en las citadas provincias y distrito electoral deben anularse por estar viciadas de terrorismo y por no reflejar así la libre voluntad del electorado en dichas localidades, por lo que se contiene que deben deducirse las citadas mayorías obtenidas por los protestados en dicha provincias y distrito electoral de la mayoría total, con el resultado de que los protestantes obtendrían las siguientes mayorías sobre los protestados: El protestante Próspero Sanidad, 38,642 votos sobre el protestado José E. Romero; el protestante Vicente de la Cruz, 17,867 votos sobre el protestado Ramón Diokno; y el protestante Servillano de la Cruz, 4,124 votos sobre el protestado José O. Vera; y consecuentemente piden que ellos fuesen declarados los candidatos debidamente elegidos a los puestos de Senador para los que fueron certificados electos los protestados.

Dada la importancia de la causa, este Tribunal extendió a las partes toda la ayuda necesaria para que pudiesen presentar sus pruebas, extendió el plazo para la presentación de las mismas y rehusó aplicar reglas técnicas cuando su aplicación no conducía a la determinación de la verdad. Los litigantes, por su parte, llevaron sus respectivos casos con todo decoro y respeto, y aprovechamos esta ocasión para felicitarles por su labor. También felicitamos al Presidente de este Tribunal por la tarea que ha sobrelevado de oír a más de 80 testigos y recibir más de 1,000 páginas de pruebas documentales en más de 100 días de vistas casi continuas. Ha desempeñado su cargo con gran habilidad.

Entremos ahora en la discusión del asunto.

Sabido es que toda elección se presume honesta y libre y que, por lo tanto, a los protestantes incumbe la prueba de lo contrario. Ahora bien, qué hechos han de probar los protestantes para que prospere su protesta, y cómo han de probar dichos hechos?

Tanto la jurisprudencia filipina como la americana, especialmente los precedentes establecidos por la Cámara de Representantes del Congreso de los Estados Unidos, proveen que para que una protesta fundada en el terrorismo o la intimidación prospere, el protestante ha de probar:

1.^o Que hubo violencia, intimidación seria, o terrorismo:

"Pruebas sobre intimidación.—La intimidación debe probarse positivamente, no sólo en cuanto a los hechos o palabras que lo constituyen, sino también respecto del número de electores intimidados." —Francisco, "Procedimiento y Tramitación de Asuntos Electorales, pár. 304, p. 481.

2.^o Que la intimidación o terrorismo surtió efecto; o sea, que a causa de dicha intimidación o terrorismo, electores se abstuvieron de votar, o fueron obligados a votar en contra de sus deseos:

"Para invalidar una elección sobre el fundamento de intimidación, incumbe al protestante demostrar que los electores fueron prevenidos de votar u obligados a votar de otra manera que la que querían; el mero ruido, la confusión o las amenazas no son suficientes." Roberts *vs.* Calbert, 98 N. C., 580, 4SE 127. Véanse también Barnes *v.* Adams, 2 Bartlet El. Cas. 760; Hurd *v.* Romeis, 49th U. S. Congress, H. R. No. 1449.

3.^o Que el número de electores así afectados era suficiente para alterar el resultado de la elección:

"Al considerar la cuestión de intimidación la primera pregunta es, cuántos votantes dejaron de votar? Aunque hubiese habido esfuerzos de amedrantar, y aunque se hubiese cometido ultrajes con este propósito, con todo, si estos esfuerzos fracasaron, si los electores que trataba de amedrantar de hecho votaron, no cabe controversia."

* * *

"Los atentados repetidos de amedrantar a los votantes de un partido no tendrá el efecto de anular la elección si aparece, como cuestión de hecho, que estos atentados no surtieron el efecto de impedir de votar a un número de electores suficiente para alterar el resultado." Norris *vs.* Handley, Smith Cont. El. Cas. 68.

4.^o Cuando no fuera posible probar el número exacto de los electores afectados, debe establecerse por lo menos que el número de ellos es tan grande que es imposible determinar el verdadero resultado de la elección:

"La facultad de rechazar la totalidad de una elección debe ejercerse con el mayor cuidado y solamente bajo circunstancias que demuestran, fuera de toda duda, que el desprecio a la ley ha sido tan fundamental o tan persistente y continuo que sea imposible

distinguir los votos legales de los ilegales o llegar a un resultado cierto, o que se haya impedido ejercer el sufragio a la gran masa de votantes, mediante violencia, intimidación y amenaza.

"Nunca se deben declarar nulas las elecciones a menos que sean claramente ilegales. Es deber de los juzgados sostener una elección autorizada por la ley, si se ha llevado a cabo sin poner ninguna traba a la libre y honrada expresión de la voluntad popular, y se ha podido determinar con claridad su resultado."—Demetrio *vs.* Lopez, 50 Jur. Fil., 48-49. Véase también McCrary on Elections, 407.

5.^o Y estos requisitos han de ser probados concluyentemente, fuera de toda duda racional:

"Si el estado de hechos probados deja dudoso, si, en general, la votación ha de ser retenida o rechazada, el comité es de opinión que mejor evitaría el establecimiento de precedentes malos dando efecto a los resultados en todos los casos de duda."—Howard *vs.* Cooper, 1 Barlet, El. Cas. 276. Véase igualmente Rosanas *vs.* Peji. 53 Jur. Fil., 26-27.

Habiendo determinado lo que los protestantes deben probar para que prospere su protesta, y como han de probarlo, examinemos ahora las pruebas obrantes en autos para determinar si o no han cumplido con estos requisitos legales.

II

Los protestantes nos han pedido que consideremos las tres provincias y distrito electoral cuestionados como una unidad. Accedimos a su petición, y vistas las pruebas practicadas, somos de opinión, y así declaramos que las pruebas que han presentado los protestantes no son suficientes para sostener su causa, toda vez que no cumplen con los requisitos arriba expuestos.

1.^o No se puede perder de vista el hecho de que van envueltos 200,000 votos en esta protesta, y que la única razón por qué se pide que rechacemos dichos votos es la intimidación que se alega fué ejercida sobre los electores de dichas provincias. Pero para probar tal intimidación, los protestantes no han presentado más que 46 testigos; y de estos 46 testigos solo 12 declararon que ellos habían sido personalmente amenazados. Los demás testigos, y las pruebas documentales de los protestantes, sólo son sobre, o tratan de probar, rumores, declaraciones de otros, o sus propias conclusiones y opiniones. Las autoridades unánimemente declaran que pruebas de esta índole no bastan para anular una elección por intimidación o terrorismo.

"907. *Prueba de intimidación.*—La intimidación debe probarse positivamente, no sólo en cuanto a los hechos o palabras que lo constituyen, sino también respecto del número de electores intimidados. Es necesario que la intimidación sea tal que, ordinariamente hablando, infunda en el ánimo un miedo bastante para coartar la libertad individual. La amenaza debe ser formal y seria; la que

se dice en son de burla, o en un momento de excitación no afecta generalmente a la libertad del elector.

"908. La prueba de referencia, los rumores, o noticias de los periódicos no son suficientes para probar que se han cometido ultrajes, o que un número de votantes fueron intimidados; sino que estos hechos deben ser establecidos mediante prueba competente, para afectar al resultado de la elección.—Villamor, Ley Electoral, pp. 367-368, y casos allí citados y véase también Norris v. Handley, Smith Elec. Cases, 68.

2.º En las tres provincias y distrito electoral que atacan los protestantes existen 1,376 precinctos y 67 municipios; pero los protestantes han presentado pruebas de intimidación en solo 16 de estos precinctos, situados en algunos barrios de solo 15 de los municipios. Del resto de 1,360 precinctos y 52 municipios no hay prueba alguna directa. La violencia e intimidación en algunos precinctos no afectan a las elecciones en otros donde fueron pacíficas y justas.

"Es evidente, de las declaraciones referidas al comité, que en las parroquias de Orleans y Jefferson, no hubo elección valida, y surge la cuestión ahora de si esto debería invalidar las elecciones en las otras parroquias del distrito y anular el resultado entero.

"En todas las otras parroquias las elecciones fueron quietas y se emitieron tantos votos como usualmente se expiden en los estados leales; y nos parece irracional e injusto que los electores pacíficos del distrito sean privados de su derecho de representación porque sus vecinos violentos atentaron de privarles de ese derecho y fracasaron.

"La mejor regla parece ser aquella indicada por la Legislatura de Louisiana, en la resolución referida a este comité, que se excluyen las parroquias desordenadas y se cuenten las parroquias pacíficas, así derrotando a los violentos y protegiendo a los ciudadanos pacíficos en su derecho de representación."—Hunt v. Sheldon, 2 Bartl. Elec. Cases, 530; Anotación 83, Am. Dec. 753.

Constituyendo el resto de precinctos electorales, sobre los cuales no se ha practicado prueba concreta, el 98 por ciento de los precinctos envueltos en esta protesta, no hay términos hábiles para anular las elecciones en todo el centro de Luzón. Y no podemos menos de notar que en 7 de los 15 municipios sobre los cuales presentaron pruebas los protestantes, su partido—el Partido Liberal—obtuvo una igualdad o mayoría de votos. Mal puede compaginarse este hecho con la alegación que ante nos hacen los protestantes de que en dichos municipios existió terrorismo perjudicial a sus candidaturas.

3.º En todas las protestas en que se ha planteado la cuestión de intimidación o terrorismo, el número de electores registrados que votaron se ha considerado siempre como un indicio fuerte. El hecho de que un gran número de votantes registrados dejaron inexplicablemente de votar, se ha considerado siempre como prueba de la existencia del terror (Demetrio vs. Lopez, 50 Jur. Fil., 48; 29 C. J. S. Elecciones, art. 214). De existir este hecho en esta causa,

los protestantes lo hubiesen probado. No lo han hecho, y, por lo tanto, podemos concluir que el porcentaje de electores registrados que votaron no difiere materialmente del de anteguerra. El número de votos que demuestran los recuentos sostiene esta conclusión. Las autoridades mantienen que cuando, como en este caso, las pruebas de intimidación y terrorismo son vagas e inciertas, el hecho de que el número usual de electores registrados votaron actualmente basta por sí sólo para mantener válida la elección. (*Niblack v. Wells, Smith Elec. Cases, 101*).

4.^o Es notable el hecho también que en el día de elecciones, salvo el asesinato de un líder de los protestados y el robo de algunas urnas después de las horas de votación, no ocurrió ningún acto de violencia o disturbio de la paz y del orden. Como admiten los protestantes en su alegato impreso (pág. 118), "es verdad que antes y durante el día de elecciones no hubo ninguna matanza al por mayor, ningún levantamiento revoltoso de las masas; ningún disturbio armado para destruir los trámites electorales en cualquier sitio del centro de Luzón." A nuestro modo de ver, este hecho, tomado conjuntamente con los anteriores, destruye las pretensiones de los protestantes. Nos parece inconcebible que el pueblo del centro de Luzón, que consiste en más de 200,000 almas, se dejase oprimir sin que algunos de ellos se revelaran contra sus opresores, causando así disturbios de la paz y el orden (*Prestoso v. Harris, 1 Bartl. El. Cas., 346*).

Algunas autoridades requieren que en tales casos haya prueba de que hubo tal despliegue de fuerza durante el día de elecciones, suficiente para amedrantar a hombres de firmeza ordinaria (29 C. J. S. Elecciones, art. 220; McCrary *supra*, p. 497).

En el caso de autos no sólo no hubo tal despliegue de fuerzas sino que, por el contrario, las autoridades se organizaron y tomaron todas las precauciones para asegurar un voto completo, libre y limpio. Grupos ambulantes de la policía militar cooperaron con las policías municipales manteniendo orden en todos los precintos. No podemos pues menos que declarar que, aun asumiendo que hubiese habido intimidación anterior a las elecciones, en el día de elecciones hubo tal protección para el votante que aseguraba a todo hombre de firmeza ordinaria la libertad del sufragio.

5.^o Además, los protestantes admiten que no han probado, ni tratado de probar, que el número de electores afectados por la intimidación y el terrorismo fué lo suficiente para alterar el resultado. Tratan, sin embargo, de acogerse a la siguiente doctrina enunciada por nuestro Tri-

bunal Supremo en el asunto de *Gardiner vs. Rómulo*, 26 Jur. Fil., 549, 594:

"Es innecesario demostrar que realmente se impidió que votase la mayoría, o que votara contra su voluntad, debido al miedo empleado (intimidación). *Cuando la maldad es flagrante y su influencia difusiva, basta con que resulte dudoso el resultado.*" (*Jones v. Glidewell*, 53 Ark., 161; 7 L. R. A., 831).

Somos de opinión que la doctrina enunciada no exime a los protestantes de su deber de probar que un número de votantes suficiente para alterar los resultados han sido afectados por la intimidación. Para que queden exentos de esta regla, es necesario que probasen no solamente que la intimidación era *flagrante*, sino también, como dijo nuestro Tribunal Supremo, que su influencia era *difusiva*. En el caso de autos, los protestantes no han probado que la intimidación fuese flagrante y difusiva. Como arriba hemos hecho notar, no han presentado más que a 12 testigos que declararon haber sido actualmente amenazados, y sus pruebas no afectan más que a 16 de los 1,876 precintos y 15 de los 67 municipios. La pretendida anulación, por lo tanto, es improcedente (*Chalmers v. Morgan, Roswell El. Cas.* 331).

6.^o Las pruebas documentales son en gran parte incompetentes. Consisten en pruebas de referencia, y en muchos casos, de investigaciones incompletas y preliminares. Así, el informe de la Policía Militar (Exhibito A-13) se expidió con el expreso aviso que los incidentes en ella mencionados estaban aún bajo investigación (Exhibito 11-1). El informe de la Comisión de Elecciones, dejando ya a un lado las dudas que han surgido en cuanto a su imparcialidad (véase declaración de Francisco Enage), fué expedida, según su ponente, sólo para "llamar la atención del Congreso a informes y reclamos presentados ante la Comisión contra la conducta de las elecciones en dichos lugares, *sin hacer ninguna conclusión de hecho ni recomendación*" (Exhibito 30). Además sus conclusiones no pueden obligar a este Tribunal.

7.^o Por su tema, se puede decir que las pruebas de los protestantes tienden a demostrar los siguientes hechos:
(a) Que en la noche de la votación, se robaron las urnas de varios precintos en Nueva Écija; (b) que los miembros de la Iglesia de Cristo fueron amenazados y amedrantados a votar en contra de sus deseos; (c) que se celebraron varios mitines en los cuales se lanzaron amenazas en contra de los que votaron por el Presidente Roxas; (d) que algunos líderes de éste fueron amenazados y no pudieron hacer campaña en todos los barrios de sus municipios; y (e) y que se cometieron algunas irregularidades en el

registro de electores en el día de elecciones, hecho esto presentado sólo como corroboración de la intimidación.

8.^o En cuanto al secuestro de urnas, puede decirse lo que dijo la Comisión de Elecciones, "que esto no afecta el resultado de las elecciones." Además, las pruebas no demuestran quiénes fueron los autores del robo.

9.^o En cuanto al supuesto atentado contra los miembros de la Iglesia de Cristo, basta notar que, si lo hubo, fué un fracaso total, salvo en cuanto a unos 400 miembros en todo el segundo distrito de Tárlac y unos 20 miembros en el barrio de Caisiwan del municipio de San Antonio, Provincia de Nueva Écija. Los mismos testigos de los protestantes declaran que los miembros de dicha iglesia *votaron como quisieron* (véanse declaraciones de José Mate, Tiburcio Ballesteros y Abelardo R. Reyes). Precisamente, porque votaron como quisieron, fueron objeto después de las elecciones de actos de represalia. Pero habiendo estos señores votado como quisieron no cabe anular las elecciones (*Norris v. Handley, ante*).

10.^o No podemos dar la importancia que los protestantes reclaman a los supuestos mitines políticos en los cuales se lanzaron amenazas a los votantes. En primer lugar, las pruebas presentados no son dignos de crédito. Los testigos, en reprenguntas, se contradijeron a sí mismos y las circunstancias sobre las cuales declararon hacen improbable su declaración. Además dos de los testigos de los protestantes declararon que no se hicieron tales amenazas. En segundo lugar, las amenazas probadas sólo tenían referencia a los votos para el cargo de Presidente. Iban dirigidas sólo contra el candidato a Presidente, y no afectaban, ni pueden afectar, al cargo de Senador, que es lo que se discute en esta protesta (véase *Balbuena vs. Tajon, G. R. No. 30272*). Finalmente, en muchos de los municipios en que se dice se celebraron tales mitines (por ejemplo, Baliwag, Papaya, Peñaranda, Guimba), los candidatos del Partido Liberal recibieron tantos sino más votos que los protestados.

11.^o Tampoco pueden tener peso la alegación de que líderes del Partido Liberal fueron amedrantados y no pudieron hacer campaña en todos los barrios de su municipio. La prueba de la amenaza no es satisfactoria, ni parece haber sido seriamente tomada por los testigos, toda vez que no la reportaron a las autoridades. Y el hecho de que no pudieron los líderes hacer campaña, no es decisivo: *primero*, porque se ha probado en muchos casos que la razón porqué no hicieron campaña era que temían represalias, no por su opinión política, sino por sus actuaciones durante la ocupación japonesa (véase Rafael Chico e Isberto Crisostomo), o porque temían a bandidos (véase

Jorge Pascua); *segundo*, porque los barrios en que se alega no pudieron hacer campaña son insignificantes en comparación con los barrios en que pudieron hacerlo; y *tercero*, porque en la mayoría de los municipios a que estas pruebas se contraen, el Partido Liberal de los protestantes obtuvo pluralidad de votos.

12.^o Trataron también de probar los protestantes que en el día de elecciones se cometieron varias irregularidades que corroboran la alegada intimidación. Las principales de estas irregularidades son: que interventores de los protestados no quisieron actuar en algunos barrios; que hubo gente armada dentro del área prohibido en el día de elecciones; que se violaba el secreto de la balota; que personas menores de edad se registraron y votaron; y que, en dos precinctos, los electores acudieron al colegio electoral en grupos de cinco, bajo un cabecilla. Aún dando como ciertas estas declaraciones, no afectan más que a siete de los 1,376 precinctos en cuestión. Las declaraciones, por sí mismas, no merecen crédito. Es notable el hecho de que no se ha presentado a ninguno de los supuestos inspectores o interventores que dejaron de actuar. No podemos considerar la prueba de que personas menores de edad se registraron y votaron, toda vez que no se protestó contra este acto a tiempo, y el censo electoral es concluyente en cuanto al derecho de votar. La presencia de gente armada en los precinctos ha sido desmentida por todos los testigos de los protestados y por los mismos informes presentados por la policía militar. La supuesta violación del secreto de la balota no se ha probado concluyentemente; por el contrario, parece que en el gran número de casos fué por descuido, o por un acto voluntario, que no obedecía a ningún plan de fraude. La supuesta regimentación de los votantes nos parece completamente inverosímil—según los testigos que declararon sobre ello, no sabían, ni conocían quiénes eran sus compañeros, aunque eran del mismo barrio—y ha sido también desmentida por los testigos, personas creíbles, de los protestados.

13.^o Finalmente, las pruebas de los protestados suficientemente contradicen, en nuestra opinión, las alegaciones de los protestantes. Los funcionarios públicos en la región cuestionada, encargados de las elecciones, declararon que las mismas habían sido libres y ordenadas. Declararon además que todas las precauciones necesarias se habían tomado para prevenir irregularidades, y proteger el derecho del sufragio. Los alcaldes de todos los municipios mencionados declararon que las elecciones en sus respectivos municipios habían sido libres, limpias y ordenadas. Estas declaraciones fueron corroborados por los gobernadores y fiscales provinciales de cada provincia. Fueron

también corroborados por el que fué Preboste Mariscal de Filipinas y por el Secretario de Defensa Nacional y del Interior.

Por estas consideraciones, concurremos con la mayoría de que no procede anular la elección en las Provincias de Bulacán, Nueva Écija y Tárlac, y por lo tanto, procede confirmar la elección de los protestados Ramón Diokno y José O. Vera, ya que no les afecta la cuestión relativa a la elección en la Pampanga.

III

Por las mismas razones antes expuestas, nos vemos obligados a disentir de la decisión de la mayoría en cuanto declara nula totalmente la elección en la Provincia de Pampanga, afectando así el resultado de la elección nacional en cuanto a los candidatos José E. Romero y Próspero Sanidad. Somos de opinión que las pruebas articuladas relacionadas con las elecciones en dicha provincia no lo justifican:

1.^o Es notable que las pruebas presentadas por los protestantes sólo afectan a seis de los veintiún municipios de la Provincia de Pampanga, y solo catorce de los cuatrocientos tres precintos de la provincia. Aún en los mismos municipios que han sido objeto de prueba, no se ha presentado prueba sobre terrorismo sobre la elección en la mayoría de los precintos de los mismos: En Arayat, que tiene veinticinco precintos, solo cuatro han sido objeto de prueba; en Lubao, que tiene treinta y dos, solo cuatro; en Macabebe, que tiene veinte, ninguno; en Masantol, que tiene dieciseis, solo uno; en México, que tiene veintisiete, solo dos; en San Fernando, que tiene cuarenta, solo tres. En vista de este hecho, creemos enteramente improcedente el anular toda la elección en cualquiera de estos municipios, y mucho menos la elección de toda la provincia.

2.^o Es notable también el hecho que ninguno de los testigos de los protestantes ha sido corroborado. Cada uno ha declarado sobre un hecho aislado, o sobre un precinto separado. La gran parte de sus declaraciones es de referencia; dos de ellos han declarado que no hubo tal intimidación o terrorismo; otros, han demostrado ser parciales, y algunos se contradijeron a sí mismos. En vista de la naturaleza e historia de esta protesta, creemos sumamente imprudente el anular una elección sólo por la declaración de un testigo no corroborado, y mucho más cuando las contradicen los mismos testigos de los protestantes.

3.^o La mayoría del Tribunal hacen hincapié en los resultados de las elecciones en Pampanga, y arguyen que el hecho de que el Partido Liberal perdió en todos los mu-

nicipios de Pampanga, demuestra que hubo terrorismo. Este argumento es *non sequitor*, como dicen los latinos.

Concedemos que el resultado de la elección es prueba corroborativa de valor; cuando ha habido prueba independiente del terrorismo, y se discute el mismo, el resultado de la elección puede muy bien apreciarse como determinativo; pero cuando no existe prueba extrínseca, el resultado no corrobora nada y no prueba más que lo que certifica.

Como hemos dicho arriba, las pruebas explícitas se limitan a solo catorce de los cuatrocientos tres precintos de esta provincia; y por tanto, aún asumiendo que tales pruebas tengan mérito, y que el resultado de las elecciones en dichos precintos lo corrobora, no cabe anular la elección en toda la provincia, ni alterar el resultado de la elección nacional, puesto que los precintos afectados envuelven un número insignificante de electores, que no afecta al resultado de la elección entre los candidatos José E. Romero y Próspero Sanidad.

4.^o No podemos perder de vista tampoco el hecho de que las pruebas de amenazas y de coerción en relación con la Provincia de Pampanga se limitan a la candidatura del Presidente, el Honorable Manuel Roxas. Que esas amenazas no afectan a los candidatos para Senador se desprende claramente de los mismos resultados de las elecciones, pues en la gran parte de los municipios, y de los precintos, algunos senadores del Partido Liberal, entre otros, nuestro estimado colega Honorable Vicente J. Francisco, obtuvieron mayor número de votos que el candidato presidencial.

5.^o La abrumadora mayoría de votos obtenida por los protestados, y por los otros candidatos del Partido a que pertenecen, en la Provincia de Pampanga, ha sido satisfactoriamente explicada por el Gobernador Provincial de la provincia de Pampanga y por el entonces Secretario de Defensa Nacional y Secretario Interino del Interior. Este último declaró en repreguntas de los protestantes que la mayoría se debía al hecho de que la gran masa del pueblo de Pampanga está compuesta de aparceros y terratenientes, quienes creían que obtendrían mayores concesiones del Partido Nacionalista que del Partido Liberal. En este punto es además oportuno notar que esta misma mayoría, casi tan grande como ella, fué obtenida por el Partido de los protestantes, entre otras provincias, en Cápiz, Leyte, Iloilo y Negros Occidental. Finalmente, los mismos resultado de las elecciones demuestran que no ha habido terrorismo en toda la Provincia de Pampanga. Las mismas diferencias de votos entre los candidatos del Partido de los protestados prueban que son el resultado espontáneo de

la voluntad de los votantes. En el municipio de Apalit, nuestro estimado colega Honorable Vicente J. Francisco, obtuvo 450 votos y el protestado José E. Romero solo 439. En Macabebe, donde dos testigos declararon que se habían celebrado mitines amenazadores, el citado Senador Francisco obtuvo 743 votos y el protestado Romero, el mismo número de votos. En Minalin, el citado Senador obtuvo 652 votos, y el protestado Romero solamente 448. En Sexmoan, el citado Senador obtuvo 286 votos, contra solo 152 del protestado Romero. Estos ejemplos de los resultados de las elecciones, son la mejor prueba de que no hubo terrorismo en cuanto a las elecciones de Senador en toda la Provincia de Pampanga, y por lo tanto que no procede la anulación total de la misma.

6.^o Con lo dicho creemos innecesario analizar las pruebas presentadas por los protestados. Bastará notar que los únicos documentos oficiales presentados en esta protesta en relación con la manera cómo se llevaron a cabo las elecciones, establecen unánimemente que las mismas fueron libres, limpias y ordenadas. Todos los funcionarios públicos que han declarado en esta protesta han declarado lo mismo.

Por todas estas consideraciones y por las expuestas en la opinión de los Senadores Mabanag y Rodríguez, me veo obligado a disentir, como disiento, de la conclusión de la mayoría anulando la elección total en la Provincia de Pampanga, y declarando electo al protestante Próspero Sanidad.

En virtud de lo expuesto, somos de opinión que debe declararse que los protestantes no han probado su protesta y, por lo tanto, la misma debe ser totalmente desestimada, y la elección de todos los protestados confirmada.

NICOLÁS BUENDÍA, *Miembro*

RODRIGUEZ, *M.*, concurring and dissenting:

Protestants petition for the annulment of the election returns for four Central Luzon provinces in connection with the national elections of April 23, 1946. The ground relied upon in the protest is terrorism. It is alleged that "there was no free expression of the popular will of the electorate in the Provinces of Nueva Ecija, Pampanga, Tarlac and Bulacan, and consequently the election in these provinces was null and void."

The question presented in the instant protest is purely factual: Does the preponderance of evidence demonstrate the prevalence of terrorism? A negative view would sus-

tain the election of the protestees. The parties involved obtained the following votes:

Jose E. Romero	563,816
Prospero Sanidad	556,772
Ramon Diokno	583,598
Vicente de la Cruz	544,621
Jose O. Vera	588,993
Servillano de la Cruz	536,995

To prove terrorism in Bulacan, protestants presented 10 witnesses, 3 of whom testified to alleged terrorism in Baliuag, three to alleged intimidation in two San Miguel precincts, and two to the conduct of elections in Malolos and Paombong. The protestees directly refuted the evidence of terrorism in Baliuag and San Miguel. It should be noted that President Manuel Roxas, head of the party to which the protestants belong, won in these two towns. Protestants' evidence of intimidation in Malolos was successfully rebutted by protestees' evidence. One of the protestants obtained more votes in Malolos than one of the protestees. The proof of terrorism in Paombong is disproved by the circumstance that an overwhelming majority of the inhabitants are affiliated with the National Peasants' Union, an organization decidedly for the protestees. Considering that President Roxas won in Bulacan, and that two peace officers testified that the election in the province were peaceful and orderly, there can be no hesitation in concluding that the protestants were not able to prove the alleged terrorism in the province. Protestants' documentary evidence is very weak.

The testimonies of the three witnesses of the protestants as to terrorism in Tarlac are contradictory. The testimonies of the five witnesses of the protestees completely destroy the assertion of terrorism. Only isolated acts were pointed out. Such slight evidence and the dubious documentary evidence cannot certainly support the invalidation of the returns for Tarlac's Second Congressional district.

As to intimidation and violence in Nueva Ecija, it may be admitted that strong evidence, testimonial and documentary, was adduced to show specific acts of terrorism, but the fact remains that the terrorism, if any, was localized and cannot overthrow the conclusion that the elections in the entire province were generally quiet and free. One circumstance which belies any consistent pattern of terrorism is that in certain localities, the protestants garnered more votes than the protestees.

I heartily concur with the majority in finding that the evidence is insufficient to prove terrorism in Nueva Ecija,

Bulacan and the Second District of Tarlac, warranting the total annulment of the returns for these places. The documentary and testimonial evidences were inconclusive as to the existence of terrorism in the three places.

But I vigorously dissent from the finding that the returns for Pampanga should be annulled because of alleged duress and threats by certain elements.

Seventeen witnesses and two exhibits were presented by the protestants to prove terrorism in Pampanga. These evidences cannot prevail over the generally known fact that the predominating majority of the residents in Pampanga have the Osmeña sympathies. There might be some frauds and instances of intimidation, but these cannot and could not have materially affected the result, which was a foregone conclusion. The major portion of Pampanga residents was against the Liberal Party. Terrorism or no terrorism, it was assumed that the Nacionalista coalition would win in the province.

To annul the Pampanga returns is to contravene the settled ruling clearly enunciated by Judge Cooley:

"It is a little difficult at times to adopt the true mean between those things which should and those which should not defeat an election; for while on the one hand the law should seek to secure the due expression of his will by every legal voter, and guard against any irregularities or misconduct that may tend to prevent it, so, on the other hand, it is to be borne in mind that charges of irregularities and misconduct are easily made, and the dangers from throwing elections open to be set aside or controlled by oral evidence are perhaps as great as any in our system. An election honestly conducted under the forms of law ought generally to stand, notwithstanding individual electors may have been deprived of their votes, or unqualified voters been allowed to participate. Individuals may suffer wrong in such cases, and a candidate who was the real choice of the people may sometimes be deprived of his election, but as it is generally impossible to arrive at any greater certainty of result by resort to oral evidence, public policy is best subserved by allowing the election to stand, and trusting to a strict enforcement of the criminal laws for greater security against the like irregularities of the future." (Cooley, Constitutional Limitations, 8th. ed., vol. 2, p. 1404.)

The Tennessee Supreme Court makes the same ruling:

"The elective franchise is a right which the law protects and enforces as jealously as it does property in chattels or lands. It matters not by what name it is designated—the right to vote, the elective franchise, or the privilege of the elective franchise—the person who, under the constitution and laws of the state is entitled to it, has a property in it, which the law maintains and vindicates as vigorously as it does any right of any kind which men may have and enjoy. The rules of law which guard against deprivation or injury, the rights of persons to corporeal properties, are alike and equally applicable to the elective franchise, and alike and equally guard persons invested with it, against deprivation of, or injury to it." (State v. Staten, 6 Coldw. (Tenn. 233.)

Our Supreme Court has ruled:

"Statutes providing for election contests in the choice of public officers may not be defeated by merely technical objections." (Galang vs. Miranda, 35 Phil. 269.)

"Rules and regulations for the conduct of an election are mandatory before election, but directory only afterward. In case of violation of law, the offenders should be punished, but not the innocent voter by depriving him of his ballot. Otherwise, the manner of performing a public duty would be of greater importance than the duty itself." (Lino Luna vs. Rodriguez, 39 Phil., 208.)

In view of all the foregoing, I vigorously dissent with the opinion of the majority declaring the elections in the Province of Pampanga as null and void and proclaiming protestant Prospero Sanidad as duly elected in lieu of José E. Romero. Such action will constitute a bad precedent and would reflect unfavorably upon this Honorable Tribunal, thereby diminishing the faith of the People in this court of justice.

I concur with the majority in not giving weight and credence to the protestants' allegations of terrorism and fraud in the provinces of Nueva Ecija, Bulacan and the Second District of Tarlac, and of upholding the elections in said provinces.

I am of the opinion that this protest should be dismissed with costs.

EULOGIO RODRIGUEZ, Sr.

MABANAG, M., concurring and dissenting

I concur in the foregoing decision insofar as it upholds the validity of the last national elections in the Provinces of Bulacan, Nueva Ecija and Tarlac, and dissent from it insofar as it annuls the elections in the Province of Pampanga.

The only ground upon which this protest is based is that, "There was no free expression of the popular will . . . in the Provinces of Nueva Ecija, Pampanga, Tarlac, and Bulacan," because these provinces "were dominated by subversive elements, particularly the Hukbalahap, which is espousing the candidacy of the respondents, resorted to force, intimidation and terrorism and designed to prevent, as they did prevent, the free expression of the popular will in said provinces" (Amended Protest, par. 4). My learned colleague, the Honorable Nicolas Buendia, has clearly and succinctly set forth what, under the law and judicial precedents, must be proved, and how, before a protest of this nature can succeed; to his lucid exposition, I wish only to add that by the very terms of the protest itself, the protestants had to prove two dif-

ferent propositions before their case would prosper, namely:

- (a) That subversive elements, especially the Hukbalahaps, in espousing the candidacy of the protestees, resorted to force, intimidation and terrorism, designed to prevent the free expression of the popular will in the four Central Luzon provinces in question; and
- (b) That the force, intimidation and terrorism so resorted to did, in fact, prevent the free expression of the popular will in these four provinces.

These propositions are, to my mind, clearly questions of fact normally to be decided solely and squarely upon the evidence presented. It has been suggested, however, that there is no need for this Tribunal to undertake the laborious and arduous task of analyzing the more than 4,000 pages of oral and documentary evidence that have been admitted in this case; that even if the evidence is insufficient, we may rule that these propositions are true, because we can, and should, take judicial notice of the existence of electoral terrorism by subversive elements in the four provinces of Central Luzon before and during the last elections. I have given much thought to the suggestion and find it impossible to accede to it.

The scope of judicial knowledge is governed by section 5 of Rule 123 of our Rules of Court, which this Tribunal has adopted as part of its own rules, and which reads as follows:

"SEC. 5. *Judicial notice.*—The existence and territorial extent of states, their forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the laws of nature, the measure of time, the geographical divisions and political history of the world, and *all similar matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions,* shall be judicially recognized by the court without the introduction of proof; but the court may receive evidence upon any of the subjects in this section stated, when it shall find it necessary for its own information, and may resort for its aid to appropriate books or documents of reference." (As amended by Resolution of the Supreme Court of August 9, 1946.)

It is at once apparent that the existence of electoral terrorism in Central Luzon is not one of the specific matters mentioned in this section. Therefore, if the matter falls within the scope of judicial notice at all, it must be because it falls within the general clause of the section, which reads as follows:

"All similar matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions."

and, in truth, the argument advanced is that the alleged terrorism in Central Luzon is a matter of public knowledge.

Disregarding for the nonce whether the existence of terrorism in Central Luzon is, in fact, a matter of public knowledge, it is important to note that not all matters of public knowledge are judicially cognizable. The phrase "matters of public knowledge" does not stand alone; it is prefaced by the word "similar." Hence, only matters of public knowledge, that are similar to specific facts previously mentioned in the section, are properly cognizable by this Tribunal. Now, an analysis of the specific facts mentioned in the section will show that their one similarity, their sole common factor, consists in that each and every one of them is either capable of exact *demonstration* or not subject to *bona fide* dispute. Hence, when the section bids courts to take judicial knowledge, of "all similar matters which are of public knowledge," they are to take cognizance only of such matters of *public knowledge as are not subject to bona fide dispute*, or are capable of exact demonstration. When the fact be not capable of exact demonstration or be subject to *bona fide* dispute, no court may properly take cognizance of it, but must decide its existence or non-existence solely on the evidence adduced.

The theory of judicial notice is precisely founded on the nondisputability of the fact to be taken cognizance of. Wigmore, in his Code of Evidence, 3d Edition (1942), p. 534, explains the reason and policy of the rule on judicial notice in these words:

"The object of this rule is to save time, labor, and expense in securing and introducing evidence on matters which are not ordinarily capable of dispute and are actually not '*bona fide*' disputed, and the tenor of which can safely be assumed from the tribunal's general knowledge or from slight research on its part. *The foundation of the rule is that the opponent does not actually or '*bona fide*' dispute the fact*, and that therefore the introduction of evidence would be a burdensome formality. Hence, on the one hand, the scope of the rule can afford to be very broad, in the absence of real dispute; and on the other hand, *it must never be used to prevent the demonstration of the actual incorrectness of the assumption, if by evidence the opponent is '*bona fide*' ready to attempt to do so*. It does become a useful expedient for speeding trials and curing informalities."

Chief Justice Moran in his "The Law of Evidence in the Philippines," Revised and Enlarged Edition (1939) says of the scope of judicial notice that:

"It may thus be seen that judicial notice covers (a) matters which are actually or in theory known to the judge in the exercise of his judicial functions, (b) *matters of notoriety*, and (c) such other facts which are *capable of unquestionable demonstration*. Noto-

rious facts, to be judicially noticeable, must *have the qualities, not only of notoriety, but of such certainty as to foreclose any bona fide dispute.*"

No better exposition of the law of judicial notice of notorious facts can be found than the decision in *Varcoo vs. Lee*, 180 Cal. 338, 344 to 347, where the Supreme Court of California said:

"* * * Judicial notice is a judicial short-cut a doing away with the formal necessity for evidence *because there is no real necessity for it*. So far as matters of common knowledge are concerned, it is saying there is no need of formally offering evidence of those things because practically everyone knows them in advance and *there can be no question about them*.

* * * * *

"The three requirements so mentioned—that the matter be one of common and general knowledge, *that it be well established and authoritatively settled, be practically indisputable*, and that this common, general and certain knowledge exist in the particular jurisdiction—all are requirements dictated by the reason and purpose of the rule, which is to obviate the formal necessity for proof when the matter does not require proof.

"It is truly said that the power of judicial notice is as to matters claimed to be matters of general knowledge one to be used with caution. *If there is any doubt whatever either as to the fact itself or as to its being a matter of common knowledge* evidence should be required. But if the court is of the certain opinion that these requirements exist, there can properly be no hesitation. In such a case there is on the one hand no danger of a wrong conclusion as to the fact—and such danger is the reason for the caution in dispensing with the evidence—and on the other hand, purely formal and useless proceedings will be avoided.

* * * * *

"The tests, therefore, in any particular case where it is sought to avoid or excuse the production of evidence because the fact to be proven is one of general knowledge and notoriety are: (1) is the fact one of *common, everyday knowledge* in that jurisdiction, which everyone of average intelligence and knowledge of things about him can be presumed to know; and (2) *is it certain and indisputable*. If it is, it is a proper case for dispensing with evidence, for its production cannot add or aid. On the other hand, we may well repeat, *if there is any reasonable question whatever as to either point, proof should be required*. Only so can the danger involved in dispensing with proof be avoided."

Now, it can hardly be said that the question of electoral terrorism is not the subject of a bona fide dispute. The existence of this case, and the fact that the parties have found it necessary to introduce more than 80 witnesses on this point, show that there is a reasonable, *bona fide* dispute as to that fact; and the dispute, like any other dispute of fact, must be decided solely on the evidence before this Tribunal. We would, therefore, be violating a cardinal principle of the law of evidence if we took cognizance judicially, in spite of the evidence before us, of a fact actually in dispute.

When Congress enacted Commonwealth Act No. 725 providing for the holding of general elections on April 23, 1946, it did not exclude these four provinces of Central Luzon. This can only be because Congress believed that elections could there be held freely and peacefully and that there was no legal or constitutional basis for excluding these provinces. That belief was fully justified by the facts. Before and during the election, all the legal organs of government were functioning regularly and effectively in each and every municipality of these four provinces. The national, provincial and municipal officials, charged with the duty of maintaining peace and order in these provinces never asked for the suspension of the election; on the contrary, their reports prove that there was no cause for such suspension because the condition of peace and order was quite satisfactory. Two weeks before the election, General Oboza, then head of the Military Police Command, assured the Commission on Elections that he could guarantee peaceful and orderly elections in Central Luzon (Exh. X, Appendix 2, p. 5; testimony of Brigadier General Federico Oboza); and, in fact, since the month of January preceding the election, the crime rate perceptibly declined in Central Luzon, and the people of that area enjoyed the most peaceful period of their existence after liberation (testimony of Hon. Alfredo Montelibano). In the fact of all these facts and circumstances, it would be the height of irresponsibility and injustice, an abominable abuse of power, to declare without weighing the evidence before us, that there was extensive terrorism by subversive elements in these four provinces of Central Luzon and that this terrorism prevented the free expression of the popular will therein.

I hold, therefore, that the existence of electoral terrorism in Central Luzon is not a proper subject of judicial notice and that this Tribunal cannot evade its constitutional duty to decide on it in accordance with the evidence produced by the parties at the more than hundred-day trial of this case. It behoves us now, therefore, to analyze the evidence at bar.

GENERAL

It seems but fitting and proper that the analysis of the evidence should start with the now notorious report of the Commission on Elections, Exhibit X in this case, for it is this report that gave rise to these entire proceedings; and it is upon it that the protestants lay great stress to prove general terrorism throughout the four provinces in question. After careful and detailed study of the report, I am compelled to hold that it is incompetent and in-

admissible; that it is not evidence at all; and that, even if it were, it is entitled to no weight whatsoever.

In the first place, the Commission is without jurisdiction to find, as it did, that "the election in the provinces (of Central Luzon) did not reflect the true and free expression of the popular will." Under section 11 of Article 3 of the Constitution of the Philippines, this Tribunal "shall be the sole judge of all contests relating to the election, returns, and qualifications" of the members of the Philippine Senate, and it is only this Tribunal, therefore, that can determine whether an election is valid or void. The Commission on Elections is required only to report "on the manner in which such election was conducted" (Art. X, section 4, Constitution of the Philippines); not to rule on its validity. While, therefore, it may—and must—report all material facts which come to its knowledge on the manner in which the election was conducted, it cannot draw any conclusion therefrom as to the validity of an election or as to the validity of votes cast—and any such conclusion has no force or effect.

Secondly, the report is not an adjudication on an adversary proceeding. It is not a judgment, and the parties now before this Tribunal had no part in its making. Its conclusions are not, therefore, binding upon this Tribunal or upon the parties to these proceedings.

Thirdly, the report is not even admissible as an official written statement. The requisites for the admissibility of official written statements are given by Mr. Chief Justice Moran in his "The Law of Evidence in the Philippines" (Revised an Enlarged Edition), pp. 316, 317 and 327, as follows:

"Requisites to admissibility.—In order that a written official statement may be received in evidence as one of the exceptions to the hearsay rule, the three following requisites must be present:

(a) That it was made by a public officer, or by another person specially enjoined by law to do so;

(b) That it was made by a public officer in the performance of his duty, or by another person in the performance of a duty specially enjoined by law; and

(c) That the public officer or the other person had sufficient knowledge of the facts by him stated, which must have been acquired by him personally or through official information.

* * * * *

It is not essential, however, for the officer making the official statement to have a personal knowledge of the facts stated by him. It is sufficient if he acquired knowledge from persons *whose duty it was to make a report for record, provided such persons have personal knowledge of the facts reported by them.*"

And it is obvious that the report in question does not comply with these requisites because there is no showing that the persons who made the reports upon which it is

based had personal knowledge of the facts reported by them.

Finally, the report of the Commission on Elections was prepared without notice to the protestees, without giving them any opportunity to cross-examine the witnesses upon whose statements the report is based, and without permitting them to disprove these statements. The Commission appears to have sought information from only such persons as it pleased, several days after the election was over, without taking any precautions to assess the veracity of the statements. To permit its use in evidence in this case, to even consider it here, would be to deny the protestees due process of law to sanction a return to that infamous inquisitorial system against which our forebears so gloriously rebelled and to defeat which they so honorably suffered and died.

But even if the report of the Commission on Elections were competent and admissible evidence, I hold that it is entitled to no weight whatsoever. We will not touch upon the paragraph of the report dealing with the transfer of the polling places from the poblaciones to the barrios in the provinces in Central Luzon: the Commission on Elections has itself declared that it decided to accede to the transfer "after considering all the circumstances" in order to insure every one the right to vote. I will, therefore, come directly to the last paragraph of the report, the paragraph on which the protestants have laid so great a stress.

The paragraph starts with the statement that "on election day, although no acts of violence were officially reported to this Commission in connection with the elections, we were advised by a representative in Nueva Ecija that ballot boxes were stolen by armed bands in the barrios of the municipalities of Bongabon, Gapan, Sta. Rosa and Guimba. These incidents are still under investigation by the Military Police Command." The theft of the ballot boxes will be dealt with later; for the present it is important to note the admission made by the Commission that no acts of violence in connection with the elections were reported to it on election day. In this connection, it must be borne in mind that the Commission on Elections had appointed "all provincial provost marshals, superintendents of schools, provincial treasurers and provincial fiscales as its deputies in connection with the elections" and had also sent election supervisors to the field for the purpose of supervising the elections (Exhibit X, pp. 1-2). The fact that not one of these deputies reported any acts of violence on election day is, to my mind, conclusive evidence that no such act was committed.

There are approximately 200,000 voters in the four provinces of Central Luzon, voters who had shown a readiness and a willingness to fight oppression during the Japanese occupation probably unequaled elsewhere in the Philippines. I cannot bring myself to believe that these 200,000 souls, after having fought, bled, and died, to regain the blessings of democracy—of which none is more sacred than the freedom of the ballot—should submit, sheep-like, to electoral terrorism. The natural, the human reaction was that some of the hardy souls among them—and there are many hardy souls—would have rebelled against this oppression, thus precipitating acts of violence on election day. That none such act was committed shows conclusively to our mind that the electorate was free to vote for whomsoever it chose.

The Commission continues with a statement that “*after* the elections, we cannot fail to notice the reports published in the newspapers of the attacks that have been made by armed bands upon persons or groups of persons who were known to have voted for candidates other than the candidates of the armed elements.” That this statement is purely hearsay, irrelevant and immaterial, is glaringly apparent. It is the first time in the judicial history of this country that an official body required to report on any fact as important as the manner in which the elections were conducted, bases its report on newspaper reports about facts occurring after the subject of its report. Apart from the fact that it is a grave violation of one of the most elementary rules of evidence for an official body to place reliance on mere newspaper reports whose correctness had not been properly substantiated, it is an act of gross irresponsibility.

The report goes on to say that “even the report submitted to this Commission by the Provost Marshal General on May 20, 1946, which is appended hereto as part hereof, contains a recital of incidents of terrorism that occurred in the four provinces of Central Luzon hereinabove mentioned which deterred and affected the national election in an undesirable manner.” Let us analyze this report, which has also been introduced in this case as Exhibit A-13 for the protestants.

The first thing that strikes the eye is that the report of the Provost Marshal General was not prepared on election day or immediately thereafter, but on May 20, 1946, or almost one month after the national elections were held.

It will be noted further, that the report was not submitted spontaneously by the Provost Marshal General, but in answer to a specific request of Commissioner Vicente de Vera for “specific incidents and events which

have occurred affecting peace and order in relation to the holding of the elections on April 23, 1946." (Exhs. 11 and 11-1.) The Provost Marshal General's report did not, therefore, intend to give a general, overall picture of the manner in which the elections were conducted in the four provinces of Central Luzon, but was expressly limited to specific incidents and events. To rule on the validity of the entire elections because of the specific incidents and events is clearly unwarranted and arbitrary, not only logically but factually: for the general reports submitted by each of the Provincial Provost Marshals, and the official position of the Provost Marshal General himself on the general manner in which the election was conducted was that the election was free, peaceful and orderly throughout these four provinces of Central Luzon.

Furthermore, when the Provost Marshal General submitted this report to Commissioner De Vera—It was Commissioner De Vera who submitted it to the Secretary of the Commission on Elections—the representative of the Provost Marshal expressly warned Commissioner De Vera that "the incidents mentioned in the enclosed report of the Provost Marshal General are still under investigation and that these should not be released to the press." The Commission, therefore, should not have given any credit whatsoever to this report until the investigation being conducted was completed.

The aforesaid report of the Provost Marshal General is hearsay twice removed. It is not based on facts which were of the personal knowledge of the officer reporting them, but on reports which are in turn based upon information supplied by still other persons! The protestees have not been given any opportunity to cross-examine either the sender of the report or the persons from whom he obtained the information, and "a statement otherwise objectionable as hearsay does not become competent because it has been reduced to writing. A written statement is equally inadmissible under the rule excluding hearsay evidence" (22 C. J., 207-209).

Even were the report of the Provost Marshal General competent evidence, it does not in any manner sustain the finding of the Commission on Elections that the incidents mentioned in it "occurred in the *four provinces* of Central Luzon" and that they "disturbed or affected the national election in an undesirable manner." A detailed and intelligent reading of the seventeen paragraphs of which the report of the Provost Marshal is composed will show exactly the contrary. In effect:

(a) Five of the seventeen paragraphs are not localized, or clearly deal with matters or provinces not in question, and are therefore immaterial;

(b) Not one incident is mentioned in the report as having occurred in the province of Bulacan;

(c) The only incident reported to have taken place in Pampanga was the assault and murder of the Joven family several hours after the balloting was over, and it could scarcely have "disturbed or effected the national election." Parenthetically, it must be noted that the Jovens were not Liberal Party men, but on the contrary leaders of the Democratic Alliance in the Province of Pampanga and their assault and murder cannot furnish any ground for holding that there was electoral terrorism in Pampanga by partisans of the protestees;

(d) The report contains nine paragraphs which deal with Nueva Ecija, but of these, five deal with the robbery after the balloting was over, of ballot boxes in certain precincts in said province, of which the Commission itself said that it "did not in any manner affect the election for any of the offices involved in this election" (Exh. X, p. 2). The remaining four are as innocuous.

The first of these four paragraphs deals with the raid on the supposed hideout of the notorious Nicasio Salonga—a fact clearly immaterial—and then says "the Huks said in their meetings at Peñaranda and Papaya: we will come back after the elections and see who of you voted for Roxas." This statement, however, like all the statements in the report, is worse than hearsay: it is a third-hand report. But assuming that that threat was competently proved, it is evident that it was wholly inoperative. In Papaya, President Roxas obtained a majority of 302 votes over President Osmeña and in Peñaranda, a majority of almost 700 votes!

The second of the paragraphs dealing with Nueva Ecija says that: "Huks fully armed . . . warned people in Santa Rosa that if they vote for Roxas, their bodies would be found floating in Sapang Gasi, barrio Santa Rosa," and ends with the statement that "terrorism exists in Zaragoza as in other towns." These statements are pure, unadulterated hearsay; and the Commission could not licitly give them credit especially when the statement that there was terrorism in Zaragoza was clearly false. For according to the election returns in that municipality, our learned colleague, the Hon. Vicente J. Francisco, obtained 530 votes, whereas protestee Ramon Diokno, who obtained the highest vote among the protestees, obtained only 493 votes.

The third paragraph on Nueva Ecija does not support the Commission's finding: on the contrary, it refutes it. For this paragraph, after reciting reports of guerrillas threatening voters, says: "Inquiry by Captain Escalona revealed that no armed men were threatening voters in

San Isidro" and ends with the significant assertion, dated the day after the elections were held, that "Everything is quiet so far with respect to election in that province!"

The last of the paragraphs about Nueva Ecija reports that on April 25, 1946, while enroute to barrio Balete, Quezon, a group of Iglesia ni Kristo members were fired upon by an armed band. There is no indication, however, that the motive for the shooting was political; it does not even appear whether the persons escorted were registered voters or not; there is no clue as to the identity or political affiliation of the assailants, although it appears that four of them were captured. This is significant. Given the rapidity with which the military police are wont, throughout the report, to attribute assaults to Huks, their failure to do so in this instance leads to the belief that the assailants were not Huks, but plain bandits. At any rate, as the assault took place two days after the elections were held, how could it have disturbed or affected the national elections in an undesirable manner, as the Commission holds?

(e) And that leaves us with only two paragraphs to discuss, those relating to Tarlac. These paragraphs, however, report merely "a semireligious persecution" of Iglesia ni Kristo members. These members are obviously not "the great majority of the voters." Their approximate number has not even been determined. Furthermore, although the paragraphs mention "intimidation of voters" and "kidnappings," the only concrete incident mentioned throughout the report is the kidnapping of four members of the Iglesia ni Kristo in a barrio of the municipality of Concepcion; and it is strange that, had there really been a widespread intimidation, and numerous kidnappings, only one case could be cited by the military police. The fact that only one case was cited shows, to my mind at least, that only that kidnapping was committed. And parenthetically, it may be noted that this is the only incident of kidnapping mentioned by any of the Tarlac witnesses presented by the protestants. The kidnapping, however, was not successful, for the persons kidnapped were rescued, and two of their supposed kidnappers were arrested and now face prosecution. There is, furthermore, no competent evidence to show that the kidnapping was political in character. Consequently, the Provost Marshal General's report does not sustain the Commission's ruling that these incidents adversely affected the election.

Following the Provost Marshal's report among the appendices to the report of the Commission on Elections, is a letter addressed to the Hon. Jose Avelino, President of the Senate, by a supposed Col. Bonifacio Dizon, which

gives a list of 54 persons whom he claims were killed by the Hukbalahaps during the occupation and after liberation, before and after the elections, and which reports that corpses of members of the Iglesia ni Kristo were found floating in the Pampanga River with a tag attached to their necks bearing the inscription "bumoto kami kay Roxas." There has been some confusion as to whether this letter forms part of the Provost Marshal General's report or not; and it is the basis of the dissenting opinion of Commissioner De Vera of the Commission on Elections, it seems proper to discuss it now. The letter was given by Senate President Avelino to Commissioner De Vera and apparently, Commissioner De Vera handed it, together with the report of the Provost Marshall General, which had been delivered personally to him by Col. Dum-lao (Exh. 11-1) to the Secretary of the Commission on Elections, and this was undoubtedly the reason why the Secretary of the Commission declared that this letter Exhibit A-13-1 forms part of the Provost Marshal General's report.

This letter is clearly and undoubtedly inadmissible and incompetent as evidence, and could not licitly be used to support any finding of fact. Firstly, it is hearsay, the author of the letter not having testified either before the Commission on Elections or before this Tribunal, although he was available, nor was it shown that he had personal knowledge of the facts he reports; secondly, the letter is immaterial, since it refers to events that took place during the occupation, or so long before or after the elections, that had nothing to do with the elections; thirdly, the supposed Col. Dizon is not a public official, but apparently only a guerrilla colonel, and his report is not an official report; fourthly, it has not even been properly identified, nor is it sworn to. It is remarkable that neither the Provost Marshall General, nor any of the Provincial Provost Marshals, mentioned the facts reported in the letter. The letter of the supposed Col. Bonifacio Dizon, therefore, can carry no weight whatsoever, and may not even be considered as evidence.

After mentioning the Provost Marshal General's report, the Commission on Elections goes on to say: "Reports also reached this Commission to the effect that in the provinces of Bulacan, Pampanga, Tarlac and Nueva Ecija, the secrecy of the ballot was actually violated; that armed men saw to it that their candidates were voted for; and that the great majority of the voters, thus coerced or intimidated, suffered from a paralysis of judgment in the matter of exercising their right of suffrage." The reports that supposedly reached the Commission are conspicuous by their absence. The Commission did not see fit to include

them as appendices to its report; the dissenting opinion of Commissioner De Vera (Exh. X-1, p. 11, item 13) does not make any mention of them whatsoever; and the protestants have not introduced them in evidence. Why? That is one of the unanswered questions of this case.

The matters supposedly reported are undoubtedly of a serious nature, grave and crass violations of the election code that the Commission is duty bound to enforce. If the reports had come from agents of the Commission, and if they had been substantiated, the Commission had the inescapable duty to order the prosecution of the guilty persons. Yet the Commission has not done so; it has not even required the alleged reports to be reduced to writing undoubtedly because they had not been formally made nor had they been substantiated. The fact that the Commission did not reveal the source of these reports, and had to have recourse to newspaper reports supports this conclusion. Mr. Lopez Vito, when questioned as to what other reports, apart from the military police report, served as the basis for the Commission's own report, could give only these: the report of April 1, 1946—or 22 days before the election—made to it at a conference of the agents of the Commission on Elections, and complaints received from Liberal Wing partisans, leaders and candidates. But obviously the report of its agents on April 1, 1946, is not the report mentioned in Exhibit X, for the former was made 22 days before the elections, and the violations mentioned in Exhibit X were supposed to have been committed on election day. The reports mentioned in Exhibit X, therefore, could proceed only from the party who lost the elections in Central Luzon. To consider these reports, proceeding from so clearly biased a source, as true; to base its findings on them, without giving the opposing party a chance to disprove them—the procedure violates not only the democratic principles on which our government is based, but the most elemental rules of fair play.

There is, therefore, no basis whatsoever for the Commission's belief that "the election in the provinces aforesaid did not reflect the true and free expression of the popular will."

The only other evidence of a general nature presented by the protestants, apart from Exhibit X and its supporting documents, consists of the testimony of Commissioner Vicente de Vera of the Commission on Elections and of the present Provost Marshal General, Mariano N. Castañeda. I will not touch upon the testimony of Commissioner De Vera. For it is not a testimony to facts which he knew of his own knowledge or which were derived from his own perception. It is nothing but an

expatiation upon, and a rationalization of, his dissenting opinion to the Chairman's report. It is an argument pure and simple. It is, therefore, completely irrelevant and incompetent as evidence. To give it evidentiary value and to base upon it definite finding or conclusion would be to show a wilful disregard, or an unpardonable ignorance of the most elementary rules of evidence.

The testimony of General Castañeda is also incompetent; and I mention it here only because it is through his testimony that the protestants have attempted to prove that the Hukbalahap is a subversive organization. It is not my purpose here to defend that organization. But in justice to it, I must point out that, according to all the evidence at bar, at the time that the Hukbalahap was created and up to the day of the elections, it was a resistance movement similar in nature to that to which General Castañeda himself belonged. That it is subversive today is a moot question, that, for obvious reasons, I would rather not discuss here. But whether the Hukbalahap be a subversive organization today, cannot affect this protest: the question at issue here is whether or not the elections held on April 23, 1946, were free, clean and orderly. Obviously, the nature of the Hukbalahap organization from and after June 2, 1946 (to which date the testimony of General Castañeda was limited) can have no bearing upon that issue.

To counteract the protestants' general evidence, the protestees presented the following: Brig. Gen. Federico G. Oboza, Provost Marshal General at the time the elections were held, who testified that the elections in Central Luzon were as a whole, free, peaceful and orderly, and that this was the official position of the Military Police Command; Judge Jesus G. Barrera, who testified as to the organization and aims of the Democratic Alliance, the means that it has followed in pursuing its campaign, and that he had campaigned in Central Luzon, and he had not seen any evidence of terrorism nor received any complaint about it; Dr. Vicente G. Lava, who testified as to the nature of the Hukbalahap organization, gave its origin, its achievements during the occupation, and described its dissolution after liberation; protestee Jose O. Vera, campaign manager of the Nacionalista Party during the last elections, who testified that no instructions were given to employ illegal means of campaigning, that, on the contrary, the instructions given were explicit, that the campaign was to be carried on strictly within the letter of the law; that he had campaigned in the Central Luzon provinces and that he had not seen or received any complaints as to terrorism, intimidation, or coercion by Nacionalistas or members of the Democratic Alliance;

Atty. Antonio J. Araneta, senatorial candidate of the Democratic Alliance, who testified that he had campaigned extensively throughout Central Luzon, that during his campaign he had not seen nor heard anyone complaining of any act of terrorism, force, intimidation or violence by any of his party members or members of the Nacionalista Party, and that conditions in Central Luzon compared favorably with conditions throughout the other parts of the Philippines that he had visited during the course of his campaign; finally, the Hon. Alfredo A. Montelibano, Secretary of National Defense and Acting Secretary of the Interior during the last elections, who testified that President Osmeña had given clear instructions that he would rather lose than win by dirty elections; that the elections were to be kept free, clean, and orderly at all cost; that all these complaints about terrorism were simply party jockeying and political maneuvering; that from January up to the election day the conditions of peace and order vastly improved in Central Luzon; that all reports made to his office were that the elections in Central Luzon had been free, clean and orderly.

In the face of all this evidence, and of the considerations so aptly set forth by our colleague, the Hon. Nicolas Buendia, I hold that the protestants have not proved that there was terrorism in Central Luzon as a whole, or that there existed a preconceived plan or design to insure the election of the protestees or their party in the provinces of Central Luzon through fraud, force or fear. On the contrary, the evidence shows that no such things existed.

PROVINCE OF BULACAN

The evidence presented by the protestants in support of their allegation of terrorism in the province of Bulacan are Exhibits H, I, J, K, L, M, M-1, N, O, P and Q, and the testimonies of Major Chaves, Lt. Ergino, Rafael Chico, Francisco Giron, Jose Mate, Isberto Crisostomo, Tomas C. Cabigao, Valeriano Reyes, Ubaldo Tecson, and Benjamin Catog.

Exhibits H, I, J, K, and L are weekly reports of the Military Police Command of Bulacan, covering the period from March 5 to 29, 1946. They show that during that period, "no trouble with strong political color had been reported," although there had been "*incidents* which could have been *motivated by personal grudges*, and of course the tendency of many is to give them a political touch" (Exh. H); that the registration of voters on March 8 and 9, was rather dull but no unpleasant incident occurred; that the inspectors for the Roxas party assigned to the poblacion of Calumpit failed to appear in their

precincts during the registration days for unknown reasons; that the political situation was not as critical as others would put it; that although there had been a constant threat on peace and security, the general tendency of the public was to react negatively because the Democratic Alliance, the PKM and the Huks had been warned on time (Exh. I); that the last registration days, March 15 and 16, passed quietly; that the peaceful procedure observed in the last registration days was indicative of the fact that the voters and political leaders were observing to the best of their abilities what the Military Police Command had expressed previously, i. e., peace and order at any cost (Exhibit J); that the general aspect of the political situation was peaceful (Exhibit K); that although the leaders of both Osmeña and Roxas Parties were leaving no stone unturned to win the electorate to their side, both factions, however, did not employ misleading ways and means to impress the people nor did they resort to subversive propaganda (Exhibit L). Exhibit O, another weekly report dated April 3, 1946, mentions the celebration held in Malolos on March 29, 1946, in connection with the anniversary of the founding of the Hukbalahap, reports the gist of some of the speeches delivered at the meeting and ends with the statement that "*as usual Bulacan province has enjoyed quietness.* The people's fear of impending attack of the Huks on the municipalities of Baliuag, Pulilan, Calumpit, Hagonoy and Malolos has gradually died out. *The people are now confident that Bulacan will maintain its security up to the election.*" In Exhibit P, still another weekly report, mention is made of the precautions taken by the MP Command to avoid trouble during the election. On April 27, 1946, in a special report devoted exclusively to the elections, the Bulacan Military Police Command reported (Exhibit M-1) that "Bulacan observed one of the quietest, if not the most peaceful elections held in said province, contrary to beliefs that widespread disturbances would take place before, during or immediately after the election." This report ends with the following statement: "*The election results convey the expression of free will of the voters,*" which was confirmed by its weekly report of May 3, 1946 (Exhibit M), which states that "*the public in general is glad to have witnessed one of the most peaceful elections ever held in Bulacan province contrary to widespread rumors that sporadic clashes would take place between die-hard followers of the political groups.*"

Exhibit Q is a communication dated June 18, 1946, to the Zone Provost Marshal, Luzon Zone, MPC, reporting Huk activities and military police operations in San Miguel, Bulacan, on June 14, 1946, and revealing the kid-

napping and subsequent release about April 26, 1946, of Prudencio Garcia, a former policeman and Roxas leader of San Miguel, Exhibits N and O, dated May 7 and June 18, 1946, respectively, report the kidnapping of the said Prudencio Garcia and alleged atrocities committed by Huks on followers of the Iglesia ni Kristo after the election. These three exhibits (Q, N and O) are immaterial and irrelevant, if not incompetent, for they refer to isolated acts of lawlessness committed many days after the election, having no bearing thereon.

Of the oral evidence, the testimonies of Rafael Chico, Francisco Giron and Jose Mate refer to the election in Baliuag. Rafael Chico spoke of the disappearance of two Roxas leaders, Kidlat and Momoy, six days after the election, and mentioned the alleged speeches delivered by the then Mayor, Santiago Santos, and one Minda, at the provincial convention of the Nacionalista Party in Baliuag before the election, attributing to these the statement that "those who will vote for Villarama and Roxas will be given 1½ square meters of ground" (meaning that they will be killed and buried). Francisco Giron claimed that he was substitute-inspector for the Liberal Wing in Precinct No. 32 of Baliuag, but that he could not perform his duties because he was threatened by a certain Mr. Lozada, an ex-Huk commander. He also said that when he went to cast his vote in one of the booths, he was handed an Osmeña ticket by one Mr. Perez who instructed him to vote for the candidates listed therein, which he did. Jose Mate declared that one night while on his way home between 9 and 10 o'clock, two persons, one named Alfonso Fernando, a municipal policeman, and an unknown companion, coming from the dark, took him to one side of the road and then asked him who were the leaders of Roxas and Villarama; that because of fear, he told them that they were Rafael Chico, Wenceslao Ortega, Valero and Fermin Samson; that the two men told him that graves were already prepared for those who would not vote for Osmeña and Santos; and that on election day, he voted for Osmeña and Alejo Santos because he was afraid. These three testimonies do not corroborate each other, for each refers to a distinct incident occurring on a different date and place. The testimony of Rafael Chico is in itself improbable and farfetched. At the convention to which he testified were present the provincial officials and several thousand electors. It is inconceivable that a public official like Mayor Santos would allow to be made threatening speeches in violation of the law in the presence of his superiors. Furthermore, it is highly improbable that a political leader of the standing of the witness would attend a convention of his opposing party even if invited thereto.

And his testimony had been flatly denied by Mayor Santos and others who were present at the convention. The testimony of Giron is immaterial. Being a mere substitute, he was not supposed to act as inspector except in cases of absence or inability of the inspector for whom he was a substitute. The testimony of Mate is also highly incredible. According to him, the names of the Roxas leaders in Baliuag were well known throughout the entire province. What need then, had his supposed assailants to ask him for their names? Furthermore, Alfonso Fernando, whom he accused as one of his assailants, testified in court and roundly denied Mate's story; and the fact that Fernando was never investigated nor prosecuted for his alleged threat lends most to his denial. The testimonies of Giron and Mate that they voted for the Osmeña ticket for fear are not only incredible but also incompetent, their ballots not having been identified and presented in evidence. These three testimonies, therefore, taken jointly or separately, do not establish the facts that they purport to prove.

The other two witnesses, Isberto Crisostomo and Tomas Cabigao, refer to two different municipalities, Malolos and Paombong, respectively. Crisostomo, who said he was the chief campaigner of the Liberal Wing in Malolos, testified that he did not campaign in the barrios of Matimbog, Mambog, Taal and Santol, because at one time while on his way between Tikay and Santol, somebody stopped him and told him that armed people were waiting on the way. This statement, besides being uncorroborated, is purely hearsay. He did not see the armed men nor was he threatened by any of them. The truth seems to be that he feared them, not because of political reasons, but because of his actions during the occupation. He also said that he designated persons to act as inspectors but on the second day of registration, these inspectors went to him and returned their appointments saying that they could not serve any longer because they were afraid. This is mere hearsay. The alleged inspectors were not presented to testify. Besides this story was not corroborated.

Tomas Cabigao, who claimed to be the campaign manager of the Liberal Wing in Paombong, said that while holding a meeting in the barrio of Sto. Rosario, a group of 30 armed men approached him and one of them told him to stop campaigning for his party, otherwise, he would be killed like ex-Mayor Eusebio Gonzales; that because of this threat, he did not return any more to the said barrio, and that the watchers for the Liberal Wing appointed by him for the barrios of Sto. Rosario, Capitangan, Bongabong and San Isidro refused to go there because they were approached by armed men who told them not to work for the Liberal Party. None of the alleged watchers was pres-

ented to testify on the alleged threat. Tomas Cabigao did not hear it. Therefore, this part of his testimony is pure hearsay. The other part is not corroborated and is hardly credible. But assuming it to be true, it does not prove terrorism in his municipality, especially because he himself admits in his testimony that despite the alleged threats, he held political meetings in all the other barrios without molestations or threats.

The testimonies of Valeriano Reyes, Ubaldo Tecson and Benjamin Cato refer to the election in San Miguel. Reyes and Cato, members of the PKM, were inspectors of the Liberal Wing in Precinct No. 30. One night, a few days after the election, their houses were riddled with bullets fired supposedly by Huks in reprisal for having worked for Mr. Roxas. Reyes was wounded in the lower jaw. Cato, a Roxas inspector in Precinct No. 25 and a member of the Iglesia ni Kristo, claims that after the election he was forced by the Huks to leave the place and that his brother-in-law, Ignacio Litikis, was kidnapped before the election because he was inspector for Mr. Roxas but was afterwards released by his kidnappers. As may be seen, the statements of Reyes and Tecson refer to a post-election reprisal, which, in my opinion, is immaterial to this contest. The testimony of Cato is not corroborated and cannot be taken as gospel truth, especially when the supposed kidnapper, his brother-in-law, was, according to the evidence, in Manila and could have testified in this case, but was not presented by the protestants. As a matter of fact, the testimonies of these two witnesses corroborate protestees' contention that there was no terrorism in Bulacan, because they prove that even members of the PKM, such as they were, could act as Roxas inspectors without being molested or threatened until many days after the election.

Now let us see the testimony of the Provincial Provost Marshal, Major Chavez. He says that, according to the reports he received from the area where the Huks were prevalent, the Huks were threatening the people if they will not vote for the Huks' candidates. The alleged reports were not, however, presented, nor any of the persons sending the reports. His testimony is purely hearsay and is furthermore, at variance with the written reports of his command which have already been analyzed.

Lt. Ergino, Major Chavez' intelligence officer, identified some of the documentary evidence of the protestants, and testified on the killing of Lt. Antonio Reyes on August 3, 1946, while on his way to Manila in compliance with a subpoena issued by this Tribunal. The killing of the latter officer, however, admittedly had no

thing to do whatever with either the elections or this protest. It seems to have been the result of some ill-feeling generated between the deceased and unknown elements in the course of the former's duty.

The most convincing evidence, however, that there was no terrorism in the election in Bulacan province is the result of the election. President Roxas won in Bulacan by more than one thousand votes, yet his vice-presidential candidate lost. Nacionalista (Osmeña Wing) candidates won the elections for representative, yet the largest number of votes for Senator was obtained by a Liberal candidate, our esteemed colleague, the Honorable Vicente J. Francisco. Seven of the sixteen senators who obtained the highest number of votes were also candidates of the Liberal Party. These results show conclusively, to my mind, that the electors of Bulacan province had, and exercised, a free choice in picking their candidates.

Not only is the protestants' evidence insufficient to warrant the holding that there was terrorism in the province of Bulacan, but the evidence presented by the protestees shows conclusively that there was no such terrorism. Former Governor Pedro Viudez, Provincial Treasurer Teofilo T. Reyes, Mayor Diosdado Dimayuga of Malolos, Mayor Luis Sta. Maria of San Miguel, Mayor Servando C. Santos, Chief of Police Enrique Castro, and Policeman Alfonso Fernando of Baliuag—all testified in this case, and their testimony in my opinion, completely refutes that of the protestants. The weakness of the protestants' evidence, however, renders it unnecessary to analyze the testimony of these witnesses here.

I, therefore, concur with the majority opinion that the elections in Bulacan must be upheld. They were unquestionably free, clean, orderly and peaceful.

PROVINCE OF NUEVA ECIJA

To prove their allegation of terrorism in the Province of Nueva Ecija, the protestants introduced in evidence Exhibits A to A-3; A-5; to A-8; A-11 and A-12; and offered the testimonies of Major Maximo Nocete, Lt. Nicancor F. Estrada, Jorge Pascua, Inocencio Talens Bantug, Juan M. Arreglado, Fausto de Roxas, Julian O. Rodriguez, Salvador Ortiz, Aurelio Monsayac, Jose Ortiz, Dionisio Torres and Silvestra Reyes.

Exhibits A to A-3 and A-5 to A-8 are official communications and telegrams concerning the forcible taking by armed men, after the voting had closed and while the ballots were being read, of the ballot boxes in two precincts of Bongabong, one precinct of Gapan, four precincts of Guimba, and six precincts of Santa Rosa. The robbing of these boxes shows, however, that there was no

terrorism in these municipalities before and during the election, or, if there was, that it did not produce the desired effect, so much so that it became necessary to rob the ballot boxes to prevent the votes cast from being counted. Furthermore, in Guimba, according to the then Mayor, Mr. Pedro C. Corpuz, whose testimony was not refuted nor contradicted, when the robbery of the ballot boxes occurred, President Osmeña was leading by a big margin over Mr. Roxas. In the precincts of Santa Rosa, Gapan and Bongabong where the ballot boxes were forcibly taken, the Osmeña ticket was also leading when the ballot boxes were stolen, according to ex-Governor Sta. Romana. These circumstances show that the robbery of the ballot boxes was not perpetrated by supporters of the protestees or of their party.

Exhibit A-11 refers to the resignation of all teachers from their assignments as inspectors and poll clerks in all the precincts of the municipality of Cabanatuan, in view of the alleged unsettled conditions of peace and order there. It appears, however, from Exhibits 7 and 7-A of the protestees, that immediately after receiving the report of the resignation of the teachers, the Commission on Elections instructed the Provincial Treasurer of Nueva Ecija to appoint qualified electors in their place, and that the Treasurer replied on March 16, 1946 that the teachers were willing to return to their respective precincts. Testifying on this matter before this Tribunal, the former Provincial Governor, Mr. Sta. Romana, said that the teachers did not resign because of threats to them, but because they hoped, by their mass resignation, to secure the transfer of the polling places from the barrios, where the bulk of the electors live, to the poblacion, which is very far from their homes, so as to prevent them from voting. He further declared that when this maneuver failed and the polling places were maintained in the barrios as provided by law, the teachers acted as election inspectors and poll clerks and none of them was molested or hurt.

Exhibit A-12 consists of petitions of Anastacio Cecilio, Assistant Campaign Manager of the Liberal Wing in Cabanatuan, dated March 11 and 12, 1946, for the transfer of the precincts in all the barrios of the municipalities of Rizal, Bongabong, San Jose and Aliaga, to the poblacion for the better maintenance of peace and order. Obviously these documents, being mere petitions, are not evidence of the allegations contained therein, especially because the Provincial Provost Marshal, Major Maximo Nocete, in his indorsements forwarding the petitions to the Commission

on Elections, stated that he did not make a thorough investigation of the allegations for lack of time.

Let us now examine the oral evidence.

The most important witness for the protestants is Major Maximo Nocete, Nueva Ecija Provost Marshal. His testimony, however, does not show either that electoral terrorism existed in his province, or that subversive elements dominated it. On the contrary, it shows that the Military Police under his command had full control of the situation. Even in meetings held by the Huks, he had his men posted and prepared for any emergency, according to his testimony. That he succeeded in his efforts is shown by the fact that, although there were some violations of the Election Law, such as the robbery of ballot boxes in some precincts, such cases, according to him, did not disturb the orderly and peaceful conduct of the elections; it is supported by the fact that the provincial fiscal reported to the Commission on Elections that no violation of the Election Law has been brought to his attention, except the robbery of ballot boxes (Exh. 3-A); and it is confirmed by the very (Exh. 18) which he submitted to the Provost Marshal General on April 25, 1946, wherein he stated that:

"1. Contrary to the general belief of the people that the election in Nueva Ecija would be disrupted by troubles and disorder, the election in this province *was peaceful and orderly except in a few isolated cases*. Even a few days before the election day no incidents happened that pointed to troubles that might have arisen during the election. While before the election many incidents happened in the province, not one of them tended to show any connection with the election."

In fact, Major Nocete testified on cross-examination that a month or so before the election, the Nacionalista Party would have won by an overwhelming majority in the province of Nueva Ecija; but the support given the party by the Huks alienated many others of its supporters so that, on election day, the Nacionalista Party majority was reduced to 10 per cent of the votes. Hence, even assuming that there were threats by Huks, these threats redounded to the detriment, and not the benefit, of the Nacionalista Party.

Lt. Estrada, Major Nocete's Intelligence officer, spoke of the robbing of the ballot boxes by lawless elements which has already been discussed above, and then stated that, after the defeat of President Osmeña, reprisals were carried out against members of the "Iglesia ni Kristo" who voted for the candidates of the Liberal Party. These alleged post-election reprisals, in my opinion, are against and not for, the protestants. They show that, even if there had been pre-election threats, the threats failed to deter the people from voting according to their choice.

Atty. Jorge Pascua, adviser of the local committee of the Liberal Wing in Guimba, testified that he could not campaign in the remote barrios of that municipality where, according to him, there were concentrations of Huks; and that his Party was not able to send watchers to these barrios because nobody volunteered to act as such. He does not cite any specific illegal act committed by the Huks in connection with the election nor any specific threat or intimidation done to him or to any other leader or voter of his party. His testimony was not corroborated by any other witness for the protestants, and was refuted by ex-Mayor Corpus who testified for the protestees. The unanswerable refutation of his testimony, however, is the result of the elections in Guimba: for here every one of the protestants obtained more votes than the protestees.

The testimonies of Inocencio Talens Bantug, Juliano O. Rodriguez, Fausto Roxas, Salvador Ortiz, Aurelio Monsayac, Jose Ortiz, and Dionisio Torres refer to the election in the municipality of Cabiao, particularly in the barrio of San Fernando. Talens Bantug said that he was an inspector of precinct No. 13, barrio of San Fernando, but did not serve as such on the first day of registration because he was threatened by a Huk leader, whose name he did not know. He, however, sat in subsequent sessions of the board of inspectors and nothing happened to him. He claims that in his precinct, the voting was conducted with open ballots, and that armed Huk leaders were continuously entering the precinct. Fausto de Roxas, a member of the PKM, testified that Juan Feleo, who was the head of their organization, instructed all the members to vote for Osmeña, for otherwise they would be liquidated. He admitted, however, that he voted for Osmeña because he had faith in the leadership of Feleo. Juliano O. Rodriguez, who claims to be a member of the CLU of the PKM, testified that Feleo, in a private meeting attended by about 40 persons, instructed his listeners to vote for Osmeña, saying that those who will not vote for him will be liquidated. Salvador Ortiz, special agent of the Department of the Interior, testified that in Precinct No. 13, barrio of San Fernando, where he voted, the electors voted by groups of five, each group being led by one of them; that after one elector of a group finished voting, he had to show his ballot to the leader; and that he observed this same procedure of voting in Precincts Nos. 4, 7, and 10. Aurelio Monsayac, inspector for the Liberal Wing in Precinct No. 12, barrio of San Fernando, stated that during the registration, he noticed some minors who registered as voters; that one night before the election, some

armed men went to his house and told him that votes for the Roxas ticket should be read as votes for the Osmeña ticket; that when he voted, he filled out his ballot on the table so that his vote could be seen because he had been told that if he would vote for the Liberal Wing, something will happen to him, and that he voted for Osmeña. Jose Ortiz testified that Tranquilino Flores, a Huk leader, said in a public meeting that all those who voted for Roxas be liquidated; that in precinct No. 12, where witnesses voted, the watchers of the Osmeña party used to interfere with the voters in the preparation of their ballots. Dionisio Torres, voter in Precinct No. 13, barrio of San Fernando, said that on election day, many persons were saying that if they voted for Roxas, they would be killed but that he does not know any of said persons.

The evidence on the alleged registration of minors as voters is incompetent because under the law (sec. 170, par. (f), Election Code), the registry list of voters, as finally corrected by the Board of Inspectors, is conclusive as to who are entitled to vote. It is also completely immaterial as there is no allegation in the protest as to such irregularity. The testimony as to the alleged instructions to read votes for the Roxas ticket as votes for the Osmeña ticket is likewise incompetent because the best and only competent evidence as to the contents of the ballots would be the ballots themselves. But these were not presented in evidence. The testimony of Salvador Ortiz as to the manner of voting in Precinct Nos. 4, 7, 10 and 13, Cabiao, is not corroborated, and is incredible: for though Ortiz voted with barrio mates, he testified that he did not know any member of his group. Except for the alleged threat, there is nothing illegal in Feleo's instructions—and the threat, to say the least—is a clear exaggeration.

The testimony of Jose Ortiz as to the alleged interference of the Osmeña party watchers with the voters who were preparing their ballots and the testimony of Dionisio Torres as to the alleged fear of several persons that they might be killed if they voted for Roxas, are not corroborated and are improbable and incredible; and all these witnesses were contradicted by the witnesses for the protestees.

Another witness presented by the protestants was Silvestra Reyes, who testified on the election in the barrio of Caisiwan, San Antonio. Reyes said that when she voted there were armed persons who were watching the voters while casting their votes, telling them that if they voted for Roxas, they would be killed. She also testified about meetings held by the Huks before the election where the

speakers allegedly threatened to kill members of the "Iglesia ni Kristo" if they voted for Roxas; the burning of the chapel of the sect five days before the election, and the killing of Manuel Gabriel, a member of the sect. She further said that the leaders of the sect compelled all the members thereof to vote for Roxas under punishment of separation from the organization if they did not follow the instruction. This testimony, as may be seen, refers to only one precinct and is not corroborated. Besides, according to this testimony, while members of the "Iglesia ni Kristo" were threatened with physical harm if they did not vote for Osmeña, they were likewise threatened with moral penalties if they voted for Roxas. This shows that the supposed intimidation to vote for Osmeña did not produce any effect; otherwise the leaders of the sect would not have dared give to its members the instructions it did; no sect would place its people in the mental torture of having to decide between physical and moral consequences.

Atty. Juan M. Arreglado, another witness for the protestants, testified he had received a threatening note warning him to desist from campaigning in the barrios of San Jose, occupied by the Huks. This testimony of the witness stands uncorroborated. It also appears from the testimony of this witness that there were 27 precincts and around 60 barrios in the municipality of San Jose; that the barrios occupied by the Huks comprised only 4 or 5 precincts; and that in the said municipality, Mr. Roxas won over Osmeña by over 800 votes, and protestants Saniudad, Servillano de la Cruz and Vicente de la Cruz obtained 800, 1,275, and 1,160 votes, respectively, protestees Vera, Diokno and Romero obtained 761, 847 and 753 votes only, respectively. Clearly the testimony of this witness does not deserve any consideration.

On the other hand, the protestees presented witnesses whose testimony could not be shaken.

Former Governor Mariano Sta. Romana of Nueva Ecija testified, among other things, that the elections were peaceful; that the Huks had not resorted to any illegal means to insure the election of their candidates; that most of the trouble was due to abuses of the civilian guards.

Former Mayor Pedro J. Corpuz of Guimba, Nueva Ecija, testified in essence that he had visited all the polling places in Guimba on registration days and on election day and that he neither witnessed nor received any report of an untoward incident or threat, except the manhandling of the President of the PKM—a partisan of the protestees—by ex-USAFFE guerrillas, partisans of the protestants.

Atanacio Magisa, former police sergeant of Cabiao, testified that on election and registration day he visited several precincts near the poblacion and witnessed no unusual

event; that he had stationed policemen in every precinct, and that no reports of any threats, intimidation or coercion, or any unusual incident, were made to him.

Nieves P. Suva, former councilor of Cabiao, testified that she visited six of the seventeen precincts in Cabiao, that she had heard of no threats or intimidation previous to the elections, that she witnessed no unusual incident or event, and that she heard of no threats being made in public meetings in Cabiao.

Sergio Ortiz, former mayor of Cabiao, Nueva Ecija, testified that no instructions to threaten people or to cause them into voting in groups of five were ever given in Cabiao; that he did not observe in his visits to all the precincts during registration and election days, any such intimidation, threats or voting in groups of five; that the Hukbalahap was never used to intimidate or threaten the voters; that the great majority of the voters of Cabiao belonged to the PKM, and that even before the war, the tenants who then composed the Frente Popular, had won the elections in Cabiao; that he ascribed the victory in Cabiao to the coalition of the tenants and the Nacionalista Party men; that Roxas' leaders campaigned actively in Cabiao.

In view of this evidence, I hold that the elections in the province of Nueva Ecija were free, clean and orderly; and I therefore concur with the majority in upholding the election in this province.

PROVINCE OF TARLAC

On the alleged terrorism in the Province of Tarlac, the protestants presented Exhibits A-4, A-9, S, T, U-1, V, Appendix 3 to Exhibit X, and the testimonies of Major Camua, Capt. Abelardo Reyes, and Mayor Agustin R. Baltazar of Victoria.

Exhibit A-9 is a communication from the Provincial Provost Marshal of Tarlac, dated February 16, 1946, to the Commission on Elections, recommending that all precincts in all the barrios of the municipalities of Concepcion, La Paz, Capas, Bamban and Tarlac be transferred to the towns proper on the ground that, according to reliable information, during the coming election, lawless elements will force the boards of inspectors to let people vote as they please regardless of qualifications. Exhibit A-4 is a telegram of the same officer, dated April 6, 1946, suggesting that the polling places of Concepcion and part of the municipality of Tarlac be transferred from the barrios to the poblacion for the sake of peace and order. As may be noted, while in February the Provincial Provost Marshal recommended the transfer of precincts of all the barrios in five municipalities, on April 6, 1946, he suggested that

transfer of polling places in the municipality of Concepcion and part of the municipality of Tarlac only, which goes to show that either the reports on which the first recommendation was based turned out to be a false alarm or that the condition of peace and order materially improved. The Commission on Elections, however, after due investigation and after "considering all the circumstances, including the recommendations of the Provincial Governor of Tarlac, the provincial Provost Marshal, the Superintendent of Schools and its investigators," decided to maintain the polling places where they were, that is, in the barrios, "as it was the policy of the Commission to see to it that all voters should be given every facility and opportunity to cast their votes freely, honestly and in orderly manner without any unnecessary inconvenience or hindrance." (Exh. X.)

Exhibit S is a copy of a criminal complaint for serious physical injuries against Felipe Dizon and twenty others filed in the justice of the peace court of Concepcion for the alleged kidnapping and detention on April 18, 1946, of Luis Alcaire and three other members of the Iglesia ni Kristo, and Exhibits U-1 and V are the supporting affidavits subscribed by Ernesto David. These exhibits merely prove that a complaint has been filed, but do not prove the truth of the allegations contained therein nor the guilt of the accused.

Exhibit T is a sworn statement of one Romulo Franco, who claims to be the president of the PKM in the barrio of Baluto, Concepcion. He says that during the election the members of the organization were compelled to vote for Osmeña and other candidates of his ticket. This being a mere affidavit it is not competent evidence of the facts stated therein. Romulo Franco was not presented to substantiate the statement made by him in this affidavit.

Appendix 3 is a copy of a communication of the Chairman, Commission on Elections, to General Oboza, Provost Marshal General, dated April 17, 1946, requesting that all necessary measures and precautions be taken to insure not only orderly elections but the free and voluntary expression of the popular will. In the third paragraph of this appendix, reference is made to several municipalities, among which Concepcion, Tarlac, La Paz and Capas, of the Province of Tarlac, where possibly disorders and threats would happen. This is undoubtedly based on the communication of the Provost Marshal of Tarlac of February 16, 1946, Exhibit A-9, which, as above stated, was later modified. As may be observed, the communication speaks only of possible disorders and threats that might occur and which did not materialize and, therefore, it is immaterial as evidence.

The protestants also presented oral evidence consisting of the testimonies of Major Demetrio Camua, Provincial Provost Marshal, Capt. Reyes, his intelligence officer, and Mayor Agustin Baltazar of Victoria. Major Camua testified about the kidnapping mentioned in Exhibit S and in the testimony of Lt. Reyes. He, however, admitted that after the election, he reported that the voting in the whole province was held orderly and peacefully.

Lt. Reyes who testified about the apprehension and prosecution of the alleged kidnappers, also testified that on election day he found in the school building at the poblacion of Concepcion more than 200 refugees from the barrios who told him that they left their barrios for fear in view of recent kidnappings of some members of the Iglesia ni Kristo; that, as they told him that they wanted to vote, he had them brought in trucks properly escorted by MPs to their precincts in the barrio of Baluto where they voted; that on the same day in the afternoon while in his Office, Atty. Maglano brought there several electors who alleged that they were afraid to go to their barrio and vote; that he accompanied them to their precinct in the barrio of Baculong, Victoria, where they cast their votes; and finally, that, according to his investigation, after the election, there were people in the barrios of Capas, La Paz, Concepcion and Victoria who told him that they could not vote on election day because they were afraid and that if they had voted they would have voted for Mr. Roxas. He, however, admitted that the voting and the conduct of the election took place as desired and in accordance with law and that he concurs in the report submitted by Major Camua that the election in the Province of Tarlac was peaceful and orderly.

Mayor Agustin Baltazar speaks of one Maximo del Rosario and others who, according to him, went to his house and upon seeing pictures of Roxas, Quirino and other Liberal Party candidates hung in his house told him to take them down. He also says that he only campaigned within the poblacion and three barrios, San Agustin, Bayanan and Dalpac out of 23 barrios because he was afraid of the threats made by the Huks and PKMs. He admits that in Victoria the memberships of the PKM was around 7,000 and that out of 4,000 registered voters, 3,000 were members of said organization. Accepting his testimony on its face value, it seems that the alleged threats did not deter him as he continued working for the candidacy of Mr. Roxas, and he did not remove the pictures of his candidates as ordered. More than three-fourth of the electors of this municipality being members of the PKM, according to this witness, which organization was committed to support the Osmeña ticket, there was evidently no need of

using threats in order to insure majority votes for the said ticket.

The protestees presented former Governor Agana, Judge Jesus Barrera, Superintendent of Schools Ramos, Mayor Castañeda of Victoria, and Gorgonio Narciso of Concepcion, who refuted the testimonies of Major Camua, Lt. Reyes and Mayor Baltazar. They also presented Exhibit 9 which is a report of the Provincial Fiscal to the Commission on Elections reporting that no case for violation of the election law has been filed by him; Exhibit 24, which is a report of Major Camua, dated April 26, 1946, informing that "election in the whole province was peaceful and orderly * * *. All MP companies have been alerted to insure a peaceful and orderly election and delightful result was realized. No trouble, election peaceful," and Exhibit 25, which is a telegram of the Superintendent of Schools to the Commission on Elections dated April 25, 1946, informing that "reports received from all election boards in the seventeen municipalities of Tarlac show without exception complete peace and order observed throughout the period of election."

It is clear that the evidence does not justify annulling the result of the election in any precinct of this province, and I, therefore, concur with the majority in maintaining the validity of the election in Tarlac.

PROVINCE OF PAMPANGA

I find it impossible, however, to concur with the majority in annulling the elections in the province of Pampanga. I have carefully studied and sifted the evidence, and I have come to the conclusion that it is as weak as that presented with respect to the three other provinces here analyzed.

A glance at the evidence with respect to Pampanga will show that the protestants have not been able to introduce any documentary evidence whatsoever of electoral terrorism in that province; that they have been able to introduce only one witness (Major Tiburcio Ballesteros) as to general terrorism there; and that their specific witnesses—17 in number—dealt only with 14 out of the 403 precincts in 6 of the 21 municipalities of the province. Even in the municipalities touched by their evidence, only a very small percentage of the precincts were actually the object of proof; In Arayat, out of 25 precincts, only 4 were dealt with; in Lubao, out of 32 precincts, only 4; in Masantol, out of 16, only 1; in San Fernando, out of 40, only 3; and in Mexico, out of 27, only 2. The paucity of the protestants' proof suffices to show that the entire election in the province should be annulled. To annul the entire election in Pampanga on the strength of such evidence would be, not only highly unjust, but a crime against democracy.

Let us first examine the documentary evidence presented by the protestants. This consists of only two exhibits (C and CC). However, Exhibit C is simply the election return of the municipality of Arayat and does not in any way prove that there was terrorism in that municipality. It serves to prove only the votes received by each of the candidates to the different positions which were object of the last elections.

Exhibit CC, which is a special report of a patrol sent to barrio San Francisco, Magalang, Pampanga, is evidence against the protestants and not for them, for their report expressly states that members of the Iglesia ni Kristo voted for President Roxas *in spite of the threats of the Huks*, and that they were being persecuted after the elections not only for that reason but also because of the opposition in principle between the two organizations. Hence, this report, assuming that it shows terrorism, proves conclusively that terrorism did not have any effect.

On the other hand, the protestees introduced two documents in evidence that show that no terrorism vitiated the Pampanga elections. The first of these documents, Exhibits 4 and 4-A, is a report of the Provincial Fiscal one month after the election that no violations of the election had ever been brought to his attention. The second is a report from a special agent of the Military Police Command who personally toured Pampanga and Bulacan on election day and who, on the basis of facts personally observed by him, said: "Election day in the Provinces of Pampanga and Bulacan was carried out in a very peaceful and orderly manner that merits comparison with pre-war election conditions. * * *. Expectation that trouble might arise in these provinces, especially in Pampanga, was entirely disproved."

An analysis of the oral testimony leads one to the same conclusion.

The protestants' general witness, Major Tiburcio Balles-teros, Provincial Provost Marshal, testified that there was *rampant information* that whoever voted for President Roxas will be liquidated; and that one quarter of the province made the report, and then another quarter of the same province. Asked, however, whether he knew of any act of violence and terrorism committed by Hukbalahaps in connection with the election, the witness could remember only one instance in the municipality of Arayat, where about twenty members reported that they have been threatened: *Parturient montes, nascitur ridiculus mus.*

On cross-examination, the witness further testified that he had received some reports that armed people were roaming around the province with the presuming intention of threatening the people during the elections, but admitted

violence and threats. The facts required by law to be taken judicial cognizance of are enumerated in section 5 of rule 123 of the Rules of Court. After naming them, that section proceeds to say: "and all similar matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions, shall be judicially recognized by the court without the introduction of proofs."

Courts of law must know as judges what they know as men (*Leonard vs. State*, 127 N. E. 464). It would be fantastic if we should pretend ignorance, because there is no proof to the effect, that the Huks are subversive elements, and employ might and force to attain their demands. It would be the height of folly if we, as members of this Tribunal, were to pretend ignorance of the almost continuous encounters between them and the Military Police, a fact so notorious among all the people in every town of this country. If we were to do so, we would be more ignorant than the rest of mankind, which is not befitting our position (*Municipal Board of Manila vs. Agustin*, G. R. No. 45844 (Sup. Ct.), VI L. J. 77, Nov. 29, 1937).

Assuming, however, that we should not have taken judicial notice of the subversive character of the Hukbalahap organization, yet we believe that there is enough evidence in the record to warrant a finding of that fact. Pedro Tan, mayor of Arayat, testified that during the enemy occupation and even after liberation, the Hukbalahap organization was never loyal to the Commonwealth Government; that it instituted a government of its own, under which the Hukbalahap was the army and the United Front was the civil organ; that he himself had to join the United Front involuntarily, for if he had not done so he would not have continued to live; and that the government instituted by the Huks collected its own taxes, elected its own officials, and ran its own affairs, in the communistic way. Tan's testimony has not been satisfactorily contradicted or otherwise destroyed.

Major Ballesteros testified that the Hukbalahap is an army of the Communists in Pampanga; that the higher headquarters decided around January or February, 1946, to confiscate their arms "but we confiscated very few"; that during the registration and election days the Hukbalahap problem became a very serious one—"At first, I thought I should distribute men to every municipality, if not by precinct, but upon studying the matter over, I found out the proposition dangerous. So instead of assigning MP's to the different municipalities and also to the precincts, I had the roving patrol. They used to visit from one municipality to another municipality, and from

one precinct to another precinct, because if I did not do that it would be very possible that my PM's will be attacked and that if they are attacked there could be no election that day"; that during the pacification campaign, the Hukbalahaps had not surrendered their arms, some of them were captured. In answer to questions of Attys. Barredo and Sanidad, Major Ballesteros declared:

Attorney Barredo:

Q. Now you are referring to the number of squadrons as forty-five. Are you referring to the number that existed prior to the elections?—A. Yes, sir.

Q. So, to be a little more exact, there were about 7,000 Huks on election day in the Province of Pampanga?—A. Well, that is what I said, there were forty-five squadrons. I received reports from different municipalities that certain squadrons were being organized. How many were actually organized, I do not know, but they told me that they were organizing.

Q. Now, these forty-five squadrons of which you had knowledge, how are they distributed around the province?—A. I said before that, they used to roam from one place to another. If they are pursued from one place they go to another.

Q. Now, on the election day and a week previous to the election how were they distributed?—A. Well, they had no fixed places, but as I said, they used to roam from one place to another. They are not like fixed military units that they have a barrack here and another one there.

Q. But more or less they had areas or spheres of activities, is that not right, Major, so much so that whenever action is going to be taken by the MP's they know where to go?—A. Well, even now I cannot tell you, that they are in a certain place, because, as I said, they are moving from one place to another. I don't know even today.

Q. Now, as of the week before the election, did you say that there were two squadrons in each town of Pampanga?—A. Well, I should say that they had even more than that, but as to the barrio where they are actually staying, it is hard to tell. Squadron No. 3 may be found in Lubao this week and next week you will hear the squadron No. 3 is in Magalang. (689, 691, 692, s. n.)

Attorney Sanidad:

Q. You mentioned during the cross-examination, Major, about your Intelligence and Investigation Officer whom you ordered to bring the I & I reports of the Province of Pampanga to this Tribunal, what is the name of this I & I Officer?—A. Lt. Antonio Reyes.

Q. Did he start from Pampanga to come to Manila to bring those reports?—A. He had been coming here not only once, or three times.

Q. Where is he now?—A. He was killed. (696-697, s. n.)

The testimony of Brigadier-General Castañeda of the Philippine Army is worth considering with regard to the subversive character of the Hukbalahap. Pertinent portions of said testimony are hereunder quoted:

A. The Hukbalahap movement is a well-organized political, economic and military organization capable of doing anything possible

under the sun. We cannot minimize the capabilities of this movement. To underestimate the potentialities of the Huks for creating civil disorder and uprooting the democratic institution for which Filipinos fought and died in the last world war, may prove fatal. (597, s. n.).

A. This Hukbalahap is an armed organization which by its own present activities and commissions will indicate that their idea is to overthrow this Government and defy constituted authority. They are armed with modern weapons and engage our men in major warfare in the provinces I have already stated (Pampanga, Tarlac, Bulacan and Nueva Ecija). We have suffered tremendous casualties in these battles and in our effort to cope with the situation. (600-601, s. n.)

Q. Would you say that this armed organization known as Hukbalahap determined to use force to overthrow constituted authorities, was a tendency of their organization even before the election of April 23, 1946?—A. Yes. (602, s. n.)

A. * * * If you had gone around with me in the four provinces, and as the one responsible for the solution of crimes, I will tell you my hardsip because before you could discover a crime there, it will take you long because nobody will talk to you. Even the men, the people concerned and affected by the crimes committed by the Hukbalahaps, they are scared for fear of kidnapping by these dyed in the wool. (618, s. n.)

Q. In the province of Pampanga, what is the proportion of the Huk population to the non-Huk?—A. The Hukbalahaps are concentrated in the municipalities of Macabebe, Masantol, Magalang, Angeles, Mabalacat, Mexico, Arayat, San Luis, San Simon, or more or less in the majority of the municipalities in the eastern side of Pampanga. (620, s. n.)

A. The clashes were due to the resistance that these Hukbalahaps are putting on against our MP's. I am going to give you one concrete example. As soon as we receive reports from a Municipal Mayor that the Huk organization will attack the town, the MP's procedure is not to wait for them to enter the town, because if the clash will take place inside the town, there will be thousands of people involved, so our duty is to meet them outside the town so that just in case combat takes place, it will be far from the civilians so as not to involve the innocents. That is where the encounter takes place. Sometimes, for example, one day—after a day of six hours fight. Those are not small fights, because they are armed with modern weapons. We have captured in many cases modern weapons—American weapons. (623, s. n.)

In view of the foregoing facts, which we find sufficiently established, it is really inconceivable how it can still seriously be contended that the Hukbalahap is not a subversive and lawless organization.

Error XIV is a reiteration of the argument, based on the report of the Pampanga Provost Marshal, that the election in that province was peaceful and orderly. This has been sufficiently disposed of in our decision, and needs no further comment.

Errors XXIII and XXIV are directed to the alleged localized character of the acts of lawlessness and terrorism proven in the records. It is argued that only the results of the election in the particular precincts as to which

there is proof of violation of suffrage should be annulled. We have already said that, notwithstanding the fact that specific proof of terrorism has not been adduced for each and every precinct of Pampanga, yet the effects of the atrocities committed in various sectors of the province were so widespread as to reach every village and home. We declare that the wrong committed was diffusive and affected the whole province. Under the circumstances, it is legally impossible to separate good votes from bad ones.

In view of the foregoing, the motions for reconsideration filed by the protestees are hereby denied.

Manila, May 8, 1947.

We concur:

Justice Ricardo Parás, *Chairman*
Justice Emilio Hilado, *Member*
Senator M. J. Cuenco, *Member*
Senator S. Pendatun, *Member*

We dissent:

Justice Gregorio Perfecto, *Member*
Senator Eulogio Rodriguez, *Member*
Senator Alejo Mabanag, *Member*
Senator Nicolas Buendia, *Member*

RESOLUTION ON PROTESTANTS' MOTION FOR RECONSIDERATION

FRANCISCO, *M.*:

Shortly after the promulgation of our decision in this case, a motion was filed by protestants Vicente de la Cruz and Servillano de la Cruz for its reconsideration, praying that the results of the election in the municipalities of Cabiao, San Isidro, Cabanatuan, Aliaga, Licab, Quezon, San Antonio, Talavera, Sta. Rosa, and Sto. Domingo, Province of Nueva Ecija, and in the municipalities of Concepcion, Bamban, Capas, La Paz, Tarlac, and Victoria, Province of Tarlac, be annulled. Should this motion be granted protestees Jose O. Vera and Ramon Diokno, whom we declare in our decision to have been duly elected Senators in the election of April 23, 1946, would be unseated, and movants would take their place, with the following relative standing in the order of their votes:

Vicente de la Cruz.....	533,603
Servillano de la Cruz	525,209
Jose O. Vera	523,710
Ramon Diokno	515,857

We notice that the movants have ultimately abandoned their objection to the election returns from the province of Bulacan, and those from municipalities of Nueva Ecija

and of the second representative district of Tarlac, not covered by their present motion. This change of contention works a virtual amendment of the protest. The protestants would have done well had they asked and secured leave to effect the amendment of their protest before rendition of our judgment. Speculation in legal suits is not favored. Be that as it may, we shall proceed to consider the motion for reconsideration as if the protest had been amended in conformity with the relief now therein prayed for.

NUEVA ECIJA

Protestants contend that there is sufficient evidence to warrant the annulment of the results of the election in the municipalities of Cabiao, San Isidro, Cabanatuan, Aliaga, Licab, Quezon, San Antonio, Talavera, Sta. Rosa, and Sto. Domingo, alleging that the voters in these places had been terrorized by the Hukbalahaps into voting for the protestees. All the evidence, both documentary and testimonial, relied upon by the movants, has been carefully examined by us for the second time, but we find no ground to change our decision.

Cabiao.—In Cabiao, there were 17 election precincts. The evidence tending to prove the commission of irregularities during the election day, however, refers only to precincts 12 and 13; while testimony on alleged threats and intimidation made by the Huks and the PKM on the population before the election, is not to our mind sufficient to warrant a finding that a great mass of voters in that municipality had been prevented from freely exercising their right of suffrage. The protestants' evidence itself shows that there are very few persons in Cabiao who were not members of the PKM. If, as is admitted, the PKM supported the candidacy of President Osmeña and that of his colleagues in the party, the logical conclusion is that very few in Cabiao could have supported the candidacy of the Liberal Wing candidates. It would seem to be out of place to suppose that the great majority of the Cabiao population could still have been the object of intimidation, when their organization known as the PKM had openly aligned itself with the Conservative Wing.

It is not amiss to observe that not a single voter, not even the inspectors or poll clerks of the Liberal Wing in precincts 1 to 11 and 14 to 17, testified to any fraud or violation of the Election Law committed on the days of election and registration.

Exhibits J and Q are cited to prove alleged terrorism in Cabiao. It appears in both exhibits that the reported kidnapping of two Liberal Wing men took place in San Miguel, Bulacan, although the kidnappers are said to have

come from Cabiao. It is plain that these documents are entirely irrelevant.

Lastly, even giving full credit to the testimony of the witnesses for protestants, as we are earnestly asked to do, the results would be that only the election in precincts 12 and 13 should be annulled, thus maintaining the election in the rest of the precincts of Cabiao, with regard to which not a single evidence regarding fraud or violation of the election law has been introduced by the protestants. The annulment of the election in those precincts 12 and 13 would not have changed the general results of the election in so far as movants are concerned.

Cabanatuan.—We are asked to annul the election in the entire municipality of Cabanatuan on the strength of the testimony of Dionisio Torres, Jose Ortiz, Lt. Estrada, Provost Marshal Nocete, the letter of resignation of the teachers of Cabanatuan (Appendix 1) and the proceedings that took place before the Commission on Elections with regard to the transfer of election precincts from the *barrios* to the *población*. We have for the second time gone over the evidence referred to and these are our findings.

Ortiz and Torres' testimony refers exclusively to alleged terrorism in Cabiao. It is, therefore, irrelevant evidence in so far as the election in Cabanatuan is concerned.

Lt. Estrada's testimony refers to stealing of ballot boxes during the counting of votes. It does not, therefore, prove terrorism in Cabanatuan before the election or during the casting of votes.

Major Nocete's testimony is, as we already declared in our decision and reiterate it now, insufficient to warrant a finding of terrorism in Cabanatuan or in the whole Province of Nueva Ecija before the election. Besides his report to the Provost Marshal General, to which we alluded in our decision, in which he certified that the election in Nueva Ecija was orderly and peaceful, we have from his testimony only two instances of alleged terrorism connected with the election. The first was the alleged shooting and cutting of the fingers of a voter who was known to be pro-Roxas, in the barrio of Platero, Cabanatuan, on one of the registration days; and the second was the alleged threats made on the members of the "Iglesia ni Kristo," reported to him, during the election campaigns. His testimony on this alleged threat was, of course, hearsay; the competent evidence to prove the same was the testimony of the persons themselves who were threatened. But it is strange that none of them testified before this Tribunal.

Appendix 1 is a supposed letter of resignation filed on March 25, 1946, by some public school teachers who were then acting as chairmen and poll clerks for the electoral precincts of Cabanatuan, the reasons for their resignation being, as stated therein, that they had experienced threats and intimidations during the registration of voters on March 16, 1946, and that in view of the unsettled conditions of peace and order in Nueva Ecija, their lives would be endangered if they rendered service in the barrios where there were no peace officers.

We note that this exhibit is just a mimeographed letter without signature; and nowhere do the names of the teachers who wrote it appear. Not even a single teacher who acted as chairman or poll clerk of any of the electoral precincts of Cabanatuan testified before this Tribunal. In our decision we held that this exhibit, if duly identified, might be competent evidence only of the fact that the school teachers have resigned as election inspectors and poll clerks in Cabanatuan, but that it is not competent evidence of the facts stated therein as grounds for their resignation. With respect to said facts, we declared in our decision that this exhibit is hearsay evidence as against the protestees, because the resigning teachers did not testify before the Tribunal and the protestees had not had an opportunity to confront and cross-examine them. Movants do not contend that this ruling is contrary to law. In fact they do not challenge its correctness. They limit themselves to copying in full this exhibit on pages 5 and 8 of their motion for reconsideration. Since the incompetency of this evidence is unquestionable, because those tests of truth which the law so wisely requires—oath and opportunity of cross-examination—are lacking, we maintain our position in not giving it any probative value.

The protestants seek to derive some advantage from certain proceedings that took place before the Commission on Elections prior to the election of April 23, 1946, in which the writer of the opinion in this case appeared as counsel for the Liberal Party and made certain statements in support of the relief he prayed for. The record of these proceedings is now part of the record of this case, as Appendix 2 to Exhibit X (report of Commission on Elections). We cannot give in this case any probative value to said record. As Appendix 2 discloses, the investigation conducted by the Commission on Elections in connection with the petition of the Liberal Party for the re-transfer of all election precincts in the barrios of Cabanatuan to the town proper, was not complete. After hearing the testimony of two witnesses, the Commission on Elections inhibited itself from further action in con-

nnection with the incident, on the ground that it no longer possessed jurisdiction to grant the re-transfer prayed for. The protestees were not parties in those proceedings, neither did they have any notice thereof, nor did they appear and adduce evidence therein.

In addition to the foregoing considerations, it is at once plain that manifestations made by a lawyer in support of his allegations or of the relief prayed for by him in connection with a proceeding or incident, are highly improper evidence to be relied upon in an absolutely separate and independent case of a different court. At any rate, whatever evidence the writer of the opinion in this case then had and intended to present, was known to the protestants, and they should have availed of it in this case. On the other hand, whatever be our personal opinions, we should not permit them to sway our judgment one way or the other. Where there is an issue of facts we are bound to apply the law to the facts as proven in the trial. We cannot go beyond that.

In addition to the foregoing facts and circumstances, we find that the election returns themselves from Cabanatuan militate against a finding of terrorism in that municipality. It appears that there were 50 election precincts, and out of that, the movants won over protestee Ramon Diokno in 23 precincts and received more or less the same number of votes as protestee Ramon Diokno received in four precincts. The grand total of the votes received by movants Servillano de la Cruz and Vicente de la Cruz are 2,416 and 2,367, respectively, while the grand total of votes received by protestee Ramon Diokno is 3,059. It can be readily seen that the difference is quite insignificant.

Aliaga, Licab, Quezon, Talavera, and Sto. Domingo.—Movants ask the annulment of the elections in the municipalities of Aliaga, Licab, Quezon, Talavera, and Sto. Domingo of the Province of Nueva Ecija on the ground of terrorism. We have re-examined the record, but have not found any evidence regarding the alleged terrorism in these municipalities. The election returns of the precincts composing said municipalities were the only evidence introduced by the protestants. Without any evidence *aliunde*, direct or circumstantial, of violations of the Election Law, the election returns by themselves prove only the number of votes received by each candidate in the election (McCrary on Elections, 4th edition, sec. 569; 20 C. J. 249).

San Isidro and Santa Rosa.—With regard to the election in San Isidro, the protestants' motion for reconsideration is based on telegram, Exhibit A-7, from MPC reporting the forcible taking of ballot boxes in Santa Rosa by

masked armed men; on telegram, Exhibit A-3, from MPC reporting that the ballot boxes from barrio San Gregorio, Santa Rosa, were recovered empty, at 0600 hours, in the Pampanga River, opposite the house of the Santa Rosa mayor; and on Exhibit A-13, which is a memorandum to the Provost Marshal General from Col. Dumlaao, dated May 20, 1946 reporting that "Hukbalahaps fully armed with bars, garands and some auto-carbines warned the people of Santa Rosa that if they vote for Roxas their bodies will be found floating in Sapang Catik in barrio Santa Rosa." This report appears to have as its source—IR, 23 April 46. It is very plain that the exhibits above-mentioned are entirely irrelevant to the issue of terrorism in San Isidro, for they all refer to Santa Rosa. The truth is, there is no specific evidence in the record tending in any way to prove any violation of the Election Law in San Isidro.

As to the effect of those exhibits on the validity of the election in Santa Rosa, we maintain the position that they are not competent evidence of terrorism causing invalidity of said election. The first two exhibits simply prove the robbery and recovery of ballot boxes after voting had already taken place. The robbery, therefore, could not have been perpetrated with the intention of preventing the voters from casting their votes or otherwise exercising their right of suffrage freely. Furthermore, there is evidence that at the time of the robbery, Conservative Wing candidates were getting more votes than their opponents. Consequently, there is reasonable doubt that the Huks could have been the authors of the lawless acts.

The last-mentioned exhibit is clearly incompetent, it being hearsay as against the protestees. It is to be deplored that Col. Dumlaao was not called to the witness stand to testify on the veracity of the contents of his memorandum. This is in contrast to what protestants have done with respect to Pampanga, as to which they adduced the testimony of Major Ballesteros, Provost Marshal, who declared that he had checked and verified all reports, verbal and written, submitted to him by his operatives, regarding the conditions of peace and order in the province.

Finally, we notice that in 6 out of the 14 precincts in San Isidro, movants Servillano de la Cruz and Vicente de la Cruz received more votes than protestee Ramon Diokno. Thus, in precinct 1, the movants received 42 and 36 votes, respectively, while said protestee received 15 votes only; in precinct 8, movants received 18 and 16 votes, respectively, while said protestee received 12 votes only; in precinct 9, movants received 27 and 31 votes,

respectively, while said protestee received 27 votes only; in precinct 10, movants received 48 and 47 votes, respectively, while said protestee received 34 votes only; in precinct 11, movants received 48 and 50 votes, respectively, while said protestee received 6 votes only; and in precinct 12, movants received 36 and 31 votes, respectively, while said protestee received 8 votes only.

We also noticed that of the 16 precincts of Sta. Rosa, movants won over protestee Ramon Diokno in 5 and obtained about the same number of votes in one. Thus in precinct 1, movants received 133 and 128 votes, respectively, while said protestee received 28 votes only; in precinct 2, movants received 10 and 8 votes, respectively, while said protestee received 9 votes only; in precinct 7, movants received 38 and 42 votes, respectively, while said protestee received 8 votes only; in precinct 11 movants received 137 and 134 votes, respectively, while said protestee received 14 votes only; and in precinct 13, movants received 17 and 14 votes, respectively, while said protestee received 10 votes only.

San Antonio.—With respect to this municipality the protestants' evidence consists merely in the testimony of a young woman named Silvestra Reyes, who testified that in April, 1946, she was a resident of barrio Kaisiwan of that town; that on election day she saw armed men watching the voters and these men told the voters that if they did not vote for President Osmeña they would be killed; that the Huks held political meetings almost every day and that the people were ordered to attend said meetings; that they threatened the people that if the latter did not vote for President Osmeña they would be killed; that five days before the election three armed Huks came to her house looking for the minister of the "Iglesia ni Kristo," and that the leader of that sect, Manuel Gabriel, was killed by the Huks because he was campaigning for President Roxas. Assuming the foregoing testimony to be true, we do not believe the same to be legally sufficient to warrant the annulment of the results of the election in the whole municipality of San Antonio. In the first place, the witness' testimony is not corroborated by any other evidence, whether direct or circumstantial. In the second place, it is impossible to draw from her testimony the inference that by reason of the acts she mentioned a great number of electors in the municipality in question had been prevented from freely exercising their right to vote.

And there is another consideration. Of the 22 precincts in San Antonio, the movants won in 6 precincts over protestee Ramon Diokno, and received about the same number of votes as the latter received in 3 precincts.

TARLAC

As stated in the first part of this resolution, the protestants seek by their motion for reconsideration the annulment of the results of the election at least in Concepcion, Bamban, Capas, La Paz, Tarlac and Victoria. They contend that as to these municipalities evidence of terrorism before and during the election exists. It is noteworthy, however, that in their motion for reconsideration they point to evidence affecting only the municipalities of Victoria, Concepcion and Tarlac. The truth is, there is no evidence whatsoever in the record, affecting Bamban, Capas and La Paz, whose election returns they likewise seek to annul.

Victoria.—Regarding the results of the election in this municipality, the protestants do not offer any new argument. They rely simply on the testimony of Agustin R. Baltazar, municipal mayor. Of this witness, we said in our decision:

"Mayor Baltazar testified that he was told by certain persons to take away the pictures of President Roxas and Vice-President Quirino, and other candidates of the Liberal Party, hanging in his house; and that he was able to make a campaign only in the *Población* and three barrios, because of fear from the Huks and the PKM. We notice a significant point in this testimony. He said that in Victoria the PKM had around 7,000 members, and of the 4,000 registered voters, 3,000 were members of the organization. If this were true, as we must accept it to be true, it would appear that there was no necessity for the PKM to employ threats or intimidation to insure the victory of their candidates."

To this we may add: One Liberal Wing candidate for senator, Eduardo Cojuangco, was among those who obtained the sixteen highest number of votes in this municipality, having polled a total of 966 (Exhibit B, sheet 2); and he and other Liberal Wing senatorial candidates won in ten out of the eighteen precincts therein. Certainly, there could not have been Huk terrorism as alleged by the protestants.

We may add further that in precinct 5 of this municipality, movants Vicente de la Cruz and Servillano de la Cruz received 74 and 69 votes, respectively, while protestee Ramon Diokno received only 18 votes; in precinct 6 the above-named protestants received 105 and 106 votes, respectively, while the above-named protestee received 115 votes; in precinct No. 7 the above-named protestants received 22 and 23 votes, respectively, while the above-named protestee received 23 votes; in precinct 9 the above-named protestants received 12 and 9 votes, respectively, while the above-named protestee received 11 votes; in precinct 10 the above-named protestants received 57 and 62 votes, respectively, while the above-named protestee received 22 votes; in precinct 11 the above-named protestants received

25 and 34 votes, respectively, while the above-named protestee received 33 votes; in precinct 15 the above-named protestants received 75 and 74 votes, respectively, while the above-named protestee received 48 votes only.

In view of the foregoing indisputable facts, it is legally impossible to hold that the election in Victoria had been influenced by terrorism on the part of the Huks; for if this had happened, it can not be conceived how the movants could have won in various precincts.

Concepcion.—The protestants rely on the testimonies of Lieutenant Reyes, Judge Barrera, Gregorio Narciso, Apolonio M. Ramos, General Castañeda and Major Camua. In our decision we analyzed in detail the testimonies of Major Camua and Lieutenant Reyes, and arrived at the conclusion that the incident referred to by them, regarding the flight on election day of more than 200 "Iglesia ni Kristo" voters from the barrios of Concepcion to the *población* for fear of being kidnapped by the Huks, did not justify the annulment of the results of the election in that municipality, because said voters, as a matter of fact, had been able to cast their votes. The protestants have not adduced any new argument in their motion for reconsideration, which would justify as to revise that conclusion. They simply give us an extract of the testimony of the aforesaid two witnesses.

General Castañeda's testimony is so general in character that it is impossible to pick therefrom any material to serve as a basis for holding the existence of terrorism in Concepcion before and during the election.

Judge Barrera's testimony does not furnish any reasonable basis for holding that the Huks had resorted to illegal means to win the election. He was asked whether he could swear that Taruc had not issued orders to his men to win the election at any cost, and he answered that he could not state under oath that that was not possible. In other words, he admitted the possibility of such an order. But such admission of the witness does not constitute proof that the order had really been made and carried out.

Gregorio Narciso testified that he had heard rumors to the effect that those who would vote for President Roxas and would not leave their barrios would be liquidated, and that according to the "Iglesia ni Kristo" this threat was made by the Huks. It is very manifest that this testimony on the point of threat is hearsay.

Neither do we find in the testimony of Apolonio Ramos, division superintendent of schools for Tarlac, evidence sufficient to justify a finding that the election in Concepcion does not reflect the popular will. This witness was

first presented by the protestees as their witness. He testified that during his visits to the different polling places on registration days he did not see any untoward incident; that in Concepcion he noted that the precincts in the *población* were under military guard; that after the results of the election were all submitted to the provincial treasurer, he sent a telegraphic communication to the Commission on Elections, informing it that the election, insofar as the school teachers who served as inspectors were concerned, was run smoothly with no untoward incidents. He was recalled to the witness stand by the protestants as a rebuttal witness. And in the course of his testimony he was made to identify the telegram that he had sent to the Commission on Elections previous to the day of voting. In his telegram, Exhibit DD, the witness said in substance that public school teachers in Concepcion, assigned as election inspectors and poll clerks, desired to be relieved of their duties in view of what they believed to be the tense situation of peace and order in that municipality, brought about by the resolution of the municipal council to concentrate all election precincts in the *población*. He further stated that according to the teachers concerned the *población* of Concepcion was virtually isolated from the barrios, because of misunderstanding between barrio people and those living in the town proper, for which reason the witness suggested postponement of the election.

Explaining the reasons for sending this telegram, the witness testified that the decision of the authorities to concentrate all precincts in the *población* of Concepcion incensed the feeling of the barrio people, so that the situation became quite tense. The school teachers became scared, in the face of rampant talk that the election was going to be bloody, and were reluctant to continue serving on the board of inspectors.

Aside from all the foregoing facts and circumstances we notice from the election returns of Concepcion that in at least two precincts of the 15 precincts in the municipality, the movants have won by a fairly good margin. Thus, in precinct 1 protestants Servillano de la Cruz and Vicente de la Cruz obtained 87 and 91 votes, respectively, while protestee Ramon Dickno received 82 votes only; and in precinct 13 the above-named protestants received 235 and 215 votes, respectively, while the above-named protestee received 30 votes only.

Tarlac.—The protestants rely on Exhibits A-4 and A-9, and on the testimony of Congressman Simpauco, in their plea for the annulment of the Tarlac election. The probative value of the two exhibits above-mentioned has already

been passed upon by us in our decision. We there declared, and we reiterate it now, that they do not constitute evidence of terrorism. The fact that in Exhibit A-4 the Provost Marshal of Tarlac recommended to the Commission on Elections the transfer of all polling places in the barrios of Concepcion to the town proper, for the sake of peace and order, does not constitute proof of terrorism. Neither does the fact that in Exhibit A-9 Capt. Dionisio recommended the same measure constitute proof of terrorism, the recommendation having been made on mere information that lawless elements would exert pressure on the voters during the election.

With regard to Congressman Simpauco we note that all that protestants have attempted to do in their motion for reconsideration is to refute his testimony for the protestees. It is unnecessary to detain ourselves further on his testimony.

Aside from the foregoing facts and circumstances, we have before us the election returns from this municipality, which show that in 9 precincts of the 38 precincts therein, movants Servillano de la Cruz and Vicente de la Cruz won with a fairly good margin over protestee Ramon Diokno. Thus, in precinct 1 movants received 136 and 130 votes, respectively, while protestee Ramon Diokno received 75 votes; in precinct 2 movants received 92 and 91 votes, respectively, while the above-named protestee received 62 votes; in precinct 3 movants received 35 and 39 votes, respectively, while the above-mentioned protestee received 29 votes; in precinct 7 movants received 54 and 50 votes, respectively, while the above-named protestee received 36 votes; in precinct 9 movants received 52 and 46 votes, respectively, while the above-named protestee received 16 votes; in precinct 10 movants received 62 and 62 votes, respectively, while the above-named protestee received 47 votes; in precinct 11 movants received 54 and 48 votes, respectively, while the above-named protestee received 36 votes; in precinct 13 movants received 40 and 38 votes, respectively, while the above-named protestee received 32 votes; and in precinct 2-a movants received 90 and 94 votes, respectively, while the above-named protestee received 61 votes only. It would be legally absurd to annul the results of the election in the whole municipality of Tarlac on the ground of terrorism by the Huks, with this showing in the election returns.

Aside from the specific evidence referred to, the protestants rely on their so-called general evidence for the annulment of the election in the municipalities of Nueva Ecija and Tarlac, above enumerated. They first refer to Exhibit A-13, which is the object of a specific finding

in our decision. We there said, and we repeat it now, that this exhibit is hearsay evidence.

Then they refer to Exhibit W, a memorandum to all Provost Marshals and Commanding Officers of the MPC, dated September 30, 1946, containing a statement of the Provost Marshal General on the Hukbalahap movement. There are a variety of objections that may be raised against the competency and relevancy of this memorandum. In the first place, this document can not serve the purpose for which the protestants would want to use it in their motion for reconsideration. For there is nothing in there that makes specific reference to the ten municipalities of Nueva Ecija or the six municipalities of Tarlac, whose election returns protestants now ask to be annulled. In the second place, this memorandum in itself is not competent evidence. At best, it may only be considered as part of General Castañeda's testimony, about which we have already commented.

The protestants next refer to Exhibit X, the report of the Commission on Elections, and Appendix 2 thereof. In our decision we devoted considerable space in the appreciation of the probative value of this document, and we believe protestants have not adduced any new argument that would justify us in reversing our conclusion.

The protestants next refer to Exhibit 13, which is the report of the Provost Marshal of Nueva Ecija to the Provost Marshal General, on the holding of election on April 23, 1946. Upon the same grounds for holding similar reports incompetent evidence as being hearsay, we declare Exhibit 13 as incompetent evidence to prove terrorism in Nueva Ecija, or even only in the ten municipalities covered by the motion for reconsideration. But even if we should accept this exhibit as competent evidence for the protestants, still it would be readily noticed that its contents, far from proving terrorism, disprove its existence. In the first two paragraphs thereof, the Provincial Provost Marshal stated that the election was peaceful and orderly, except in a few isolated cases; and that during and immediately after the election day, officers and men of the MPC made inspection tours of the whole province and they all reported that everything was quiet in the places they inspected. The third and fourth paragraphs make mention of reports received by his headquarters, but which were verified to be untrue, with the exception of the robbery of ballot boxes in Santa Rosa, Guimba and Boñabon. Of this robbery of the ballot boxes, we have already made our comment in this resolution. The closing paragraph of the report begins by saying that "election in this province was peaceful and

without bloodshed and the only anomalies were the loss of ballot boxes and the presumed kidnapping of several inspectors in Guimba." Then it proceeds to express the fear that Huks would go after many people who voted for President Roxas, specially the members of the "Iglesia ni Kristo." It is very manifest that this mere expression of fear by the Provincial Provost Marshal does not constitute competent evidence. It is not shown in the report that the fear was justified or that the expected revenge had been carried out, and that its consummation was in accordance with a plan hatched before the election.

The protestants next refer to the proceedings before the Commision on Elections, in which the writer of this opinion appeared as counsel for the Liberal Party. We have already declared that the record of said proceedings is not admissible evidence in the present case.

The protestants refer, lastly, to their Exhibit S. We have already declared in our decision that this exhibit is competent evidence only of the fact that a criminal complaint for serious physical injuries had been filed against Felipe Dizon and twenty others in the justice of the peace court of Concepcion, Tarlac, for the alleged kidnapping and detention on April 18, 1946, of four members of the "Iglesia ni Kristo," but not of the fact of kidnapping. We are now urged to give full probative weight to this exhibit. If by this prayer protestants mean that we should accept this exhibit as proof of the detention, this Tribunal will not be in position to accede to the request without violating the most elementary rule of evidence, regarding confrontation and cross-examination. It should be noted that the question whether the accused under the complaint Exhibit S were guilty of kidnapping or not, involves an issue of fact that has not yet been determined by the court trying the case. And it is certainly not within our domain to make an advanced determination in this case as to their guilt.

In the last part of their motion for reconsideration, the protestants vigorously urge us to consider the difference in the number of votes obtained by the candidates of the Liberal Wing on one hand, and those of the Conservative Wing on the other, in the municipalities whose election returns they see to annul, as evidence of terrorism before and during the election. The protestants point to our decision with respect to Pampanga, and we are now asked to apply the same criterion to the municipalities questioned. We have examined and re-examined the election returns for Senators from the 16 municipalities involved in the motion for reconsideration, but we find no analogy between those returns and the returns from Pampanga.

In the former, the difference in the number of votes between the contending parties is not so great as the difference obtaining in the case of Pampanga, where the returns from many precincts showed zero votes for all Liberal Wing candidates, and where President Roxas lost in all municipalities and got zero vote in 78 precincts. In the case of Nueva Ecija, however, President Roxas, the standard bearer of the Liberal Wing, won in 14 municipalities, while President Osmeña, the standard bearer of the Conservative Wing, won only in 13 municipalities. And in the case of Tarlac, President Roxas won in 9 municipalities while President Osmeña won only in 8 municipalities.

In view of all the foregoing considerations, the motion for reconsideration filed by protestants Vicente de la Cruz and Servillano de la Cruz is hereby denied.

Manila, May 8, 1947.

PERFECTO, J., concurring and dissenting:

Consumatum est: Uttered from a cross in Calvary almost two thousand years ago, under the most poignant circumstances recorded in human memory, such are the words that Senator Jose E. Romero may repeat in this crucial hour of his holocaust. *Consumatum est:* we will also hear from the quivering lips of Justice, the lady whom all pretend to respect and venerate, in this case trampled upon, outraged and, finally, crucified on the cross of political maneuver and partisan fanaticism. Enveloped in the trenchant gloom of the tragedy of one of its most crushing defeats, muttering with infinite sorrow, Democracy will echo: *Consumatum est!*

Consistent with an invariable stand, based on principles embedded in deep-rooted conviction, we expressed in our concurring and dissenting opinion, at the time this case was decided, our disapproval to the long delays in the hearing and final disposal of this protest. Then we also voiced our objection and alarm because Senator Proceso Sebastian, as a member of this Electoral Tribunal, was unexpectedly and suddenly substituted by Senator Mariano Jesus Cuenco, without any apparent reason, and on the eve of the decision of the contest, less than a week before the final vote.

Then there was no evidence by which we could link the delays, coupled with the substitution, which is unconstitutional, with the injustice committed against Senator Romero, by which he is to be replaced in the Senate by a candidate who has not been chosen by the electorate. Now that missing evidence is furnished by the publication made on May 6, 1947, by *The Manila Chronicle* to the effect that Senator Sebastian is of opinion that, upon the

evidence in this protest, there is no reason to declare null and void the election in Pampanga, meaning that the election of Senator Romero must be sustained, and the vote of Senator Sebastian would have been decisive in his favor.

The pertinent portions of the publication of *The Manila Chronicle* are as follows:

PARTY PRESSURE BARED

"SEBASTIAN TOLD TO QUIT POLL COURT"

"The inside story of the withdrawal of Senator Proceso Sebastian (L-Cagayan) from the Electoral Tribunal and his substitution by Senator M. Jesus Cuenco before this body decided the electoral protest against minority Senators-elect Ramon Diokno, Jose O. Vera and Jose E. Romero was disclosed to this reporter yesterday by an unimpeachable source.

"Senator Sebastian had resigned not only from the Electoral Tribunal but also threatened to resign from the Liberal Party in protest against alleged pressure exerted on him by a party mogul who insisted that decision on the electoral protest should be along party lines. Sebastian insisted that on the basis of the evidence presented to the Tribunal, there was no sufficient ground to annul the result of the elections in the entire province of Pampanga, this source said.

"However, Sebastian was prevailed upon to remain with the Liberal Party but he was persuaded to give way to Senator M. Jesus Cuenco as one of the majority party members of the Tribunal. The move, however, failed to effect the ouster of two of the three minority senators. When the decision of the Tribunal was handed down last month, it seated Vera and Diokno, although Liberal Party candidate Prospero Sanidad was declared elected instead of Romero.

"When Senator Sebastian refused to 'follow order from higher ups,' he was told to surrender his place in the Tribunal to Senator Mariano Jesus Cuenco. At this juncture, Senator Sebastian presented his resignation as member of the Liberal Party, but cooler heads intervened and he was prevailed upon to stick with the party.

"Close friends of the senator revealed that when Senator Sebastian was approached by party leaders to favor the Liberal Party protestants in giving his decision on the election protest, Sebastian told his party leaders that he would vote only on the basis of the evidence presented as a judge would, and never as a politician or a Liberal Party man.

"Having been in the opposition party (Democrata) for many years, Senator Sebastian told the Liberal Party leaders that as a former oppositionist he 'could not countenance the abuses of the majority party; the very abuses which he fought against when he was a Democrata.'

"Senator Sebastian, it was further said, told the majority leaders that while there was some terrorism in several precincts in Pampanga, that terrorism in small scale was not enough to cause the annulment of the result of the election in the entire province of Pampanga.

"The Sebastian case occurred under similar circumstances which were disclosed in connection with the decisive vote of Senator Francisco. After voting for the seating of Vera and Diokno, Fran-

cisco submitted his resignation as majority floor leader, but this was not accepted by Senate President Jose Avelino."

The prominence given to the publication, with a heading in bold type, occupying the whole width of the newspaper, and the great public interest involved in it, if not true, would have provoked an immediate denial from Senator Sebastian. No less should be expected from his sense of civic duty. Denial has not been made, and none is forthcoming. Goaded even by Senate President Jose Avelino to issue a denial, Senator Sebastian himself stated that he has chosen not to deny the publication.

The pertinent portions of an article on this respect which appeared in the May 7, 1947, issue of *The Manila Chronicle*, follow:

MEDDLING IN TRIBUNAL HIT BY PERFECTO

"The facts brought to light by the expose published exclusively by the *Chronicle* yesterday revealing the inside story of the withdrawal of Senator Proceso Sebastian (L-Cagayan) from the Electoral Tribunal 'is evidence of unethical manipulation of the membership of the Tribunal.'

"This is according to Justice Gregorio Perfecto, one of three members of the Supreme Court who are on the electoral court. The Tribunal decided to seat two minority candidates—Senators-elect Ramon Diokno and Jose O. Vera—and one majority man, Prospero Sanidad, who was declared elected instead of Jose E. Romero, Nacionalista.

"While Senate President Jose Avelino yesterday issued a statement denying partisan pressure on Senator Sebastian, and calling upon the latter to attest to this, Senator Sebastian himself chose to remain silent.

"When seen by a *Chronicle* reporter yesterday, Senator Sebastian preferred not to be quoted.

"Commenting on the withdrawal of Senator Sebastian from the Electoral Tribunal as a repercussion of his refusal to follow party alignments in connection with the senatorial electoral protest involving Diokno, Vera and Romero, Justice Perfecto said that he has known Senator Sebastian for many years. 'We fought together in the opposition and I know that once placed in a judicial position, Sebastian will never surrender his sense of justice in favor of political expediency, no matter how strong is the pressure exerted on him,' the Justice stated."

Senate President Avelino's call to Senator Sebastian to attest as to the former's denial of partisan pressure having been exerted on the latter has been published also in other newspapers, such as *The Manila Post* and *Manila Tribune*, but Senator Sebastian remained adamant in his refusal to attest to what in conscience he believed do not tally with the truth.

We are, therefore, justified to conclude, beyond all reasonable doubt:

1. That political pressure has been exerted on Senator Sebastian by a party mogul, who insisted that the decision in this case "should be along party lines."

2. That Senator Sebastian "insisted that on the basis of the evidence presented to the Tribunal, there was not sufficient ground to annul the result of the election in the entire province of Pampanga."

3. That Senator Sebastian "told the majority leaders that, while there was some terrorism in several precincts in Pampanga, that terrorism in small scale was not enough to cause the annulment of the result of the election in the entire province of Pampanga."

4. That Senator Sebastian "told the Liberal Party leaders" that, "having been in the opposition party (Democrata) for many years, he could not countenance the abuses of the majority party, the very abuses which he fought against when he was a Democrata," and that "he would vote only on the basis of the evidence presented as a judge would, and never as a politician or a Liberal Party man."

5. That when he refused to "follow order from higher ups," he was told to surrender his place in the tribunal to Senator Mariano Jesus Cuenco, to which he countered by presenting his resignation as member of the Liberal Party, but by the intervention of "cooler heads," Senator Sebastian was prevailed upon to stick with the party and to give way to Senator Cuenco.

6. That the substitution had the effect of depriving Senator Romero of the decisive vote of Senator Sebastian, which would have sustained his election, and of favoring protestant Sanidad with the illegal vote of the substitute, Senator Cuenco.

7. That had the decision of this case not been delayed for more than three months, the time intervening from submission of the case to the date of the unconstitutional substitution, Senator Romero would have been adjudged as the one duly elected and not protestant Sanidad.

8. That the long delay and the unconstitutional substitution concurred in to achieve a tragic miscarriage of justice.

That the substitution is unconstitutional can be shown by the fact that it is not authorized by the Constitution.

The authors of the Constitution did not choose to grant the authority for logical reasons. The Senate Electoral Tribunal is a body periodically organized and dissolved. Its periodic existence does not extend to more than two years. According to section 13 of Article VI of the Constitution, it must be organized within thirty days after the Senate is organized with the election of its President, which takes place after each senatorial election, every two years. It is not probable nor natural that in two years the 9-man membership of the Tribunal may be diminished to need replacement.

Another reason for not authorizing substitution is precisely to avoid the evil that caused the miscarriage of justice in this case. If substitution is allowed, then the legislative members of the Tribunal might never have a chance of acting according to the dictates of their own conscience, as unscrupulous party leaders may always change them with blind or fanatical followers. When the Electoral Commission was created, the purpose of the Constitutional Convention was to establish a veritable court of justice which will judge election contests with strictly judicial criterion. The fact that the majority and the minority were given representation was only a compromise with those who would not eliminate completely legislative participation, but the idea of strict justice has always prevailed, as shown by equalization of party representations, so that in case the legislative members should follow party lines, the majority and the minority will neutralize each other. The Senate Electoral Tribunal is but one successor of the former Electoral Commission.

Upon considering the several motions filed after the decision in this case, we do not find any reason why we should change the position taken in our concurring and dissenting opinion. We are still of opinion that the evidence do not support the protest; that there is no legal or factual ground to declare null and void the election in any one of the four provinces involved in this election contest; that the three contestants, Senators Vera, Diokno and Romero were duly elected.

With respect to the motion for reconsideration of Senator Romero, in voting to grant it, we have in mind the additional ground of the unconstitutionality of the substitution of Senator Sebastian by Senator Cuenco. The majority decision declaring protestant Sanidad elected in lieu of Senator Romero being null and void *per se*, because the majority has been obtained including the illegal vote of Senator Cuenco, which is unconstitutional, while the vote of Senator Sebastian, the constitutional member, has not been taken.

Regarding the new question raised by protestees, based on protestants' failure to allege that they are duly "registered" candidates, and urging the dismissal of the protest on the strength of the decision of the Supreme Court in *Tengco vs. Jocsom* (43 J. F. 748), *Viola vs. Court of First Instance* (49 J. F. 485) and others, and of the resolution of the Electoral Tribunal of the House of Representatives dated April 21, 1947, dismissing the protest in the case of *Maximo J. Zavellano vs. Floro Crisologo*, we are of opinion that the doctrine in said decisions had become obsolete when the Election Code came into effect. Therefore, al-

though we are of opinion that the protest in this case should be dismissed on the basis of the evidence on record, said doctrine cannot be taken as basis for said dismissal. When, as a member of the National Assembly, we drafted the Election Code, with the help of Senator Ramon Diokno, we purposely drafted the provision pertinent to election contests to avoid in the future the application of the doctrine originally advanced in *Tengco vs. Jocsom, supra*, because the same is wrong in principle and, in effect, resulted in sacrificing the supreme interest of justice in many cases for the sake of a mere technicality or formality. We have always subscribed to the theory expressed by Justice Cardozo in the following words:

"The law has outgrown its primitive stage of formalism when the precise word was the sovereign talisman, and every slip was fatal. It takes a broader view today." (*Wood vs. Lucy, New York.*)

GREGORIO PERFECTO

We concur:

Justice Gregorio Perfecto, *Member*
Senator Eulogio Rodriguez, *Member*
Senator Alejo Mabanag, *Member*
Senator Nicolas Buendia, *Member*

We dissent:

Justice Ricardo Paras, *Chairman*
Justice Emilio Hilado, *Member*
Senator M. J. Cuenco, *Member*
Senator S. Pendatun, *Member*